

1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF MASSACHUSETTS

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5 BRAUN, GMBH,
6 Plaintiffs, Civil Action No.
7 against 03 CV 12428 WGY
8 RAYOVAC CORPORATION,
9 Defendant.

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11
12 TRANSCRIPT OF PROCEEDINGS

13 HEARING: Deposition of JAMES DOYLE, III
14 DATE: June 3, 2005
15 TIME: 9:00 a.m.
16 PLACE: 740 Regent Street, Madison, Wisconsin
17 REPORTER: Lynn M. Bayer, RPR, CM

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25 Job No: 3314

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2 APPEARANCES

3

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20 (FOR INDEX SEE BACK OF TRANSCRIPT.)

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2 JAMES A. DOYLE, III, DEPONENT WITNESS, DULY SWORN

3 EXAMINATION

4 BY MS. WENDLANDT:

5 Q. Can you state your name for the record.

6 A. James A. Doyle, III.

7 Q. And where do you live?

8 A. In Middleton, Wisconsin.

9 Q. What's your exact address?

10 A. 9715 Red Sky Drive, Middleton, Wisconsin, 53562.

11 Q. Mr. Doyle, have you been designated by Rayovac to

12 speak on behalf of the company with regard to certain

13 topics --

14 A. Yes.

15 Q. -- listed in the Notice of Deposition?

16 A. Yes.

17 Q. One thing I should explain to you since you mentioned

18 earlier this was your first deposition is that you

19 need to wait until I finish asking my question even

20 though I'm a slow talker so people tend to try to get

21 in there, just wait because the court reporter needs

22 to write down everything that we say and she can only

23 do one at a time.

24 A. Okay.

25 Q. I'm going to put before you what's been previously

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2 marked as Exhibit 1.

3 A. Okay.

4 Q. Have you seen this Notice of Deposition before?

5 A. Yes.

6 Q. Can I ask you to turn to page 5 which is the

7 deposition subject matters. Do you have that page?

8 MR. SHIMOTA: Page 5. That's where you

9 are.

10 BY MS. WENDLANDT:

11 Q. Do you have that page?

12 A. I have it right here, yes.

13 Q. On which topics have you been designated by the

14 company to speak, that is, Rayovac Corporation?

15 A. I haven't seen this -- I haven't seen this sheet,

16 have I?

17 MR. SHIMOTA: What he is saying is our

18 objections, well, the version of it where we had

19 certain objections to it, so yes, he has, but --.

20 A. It just looks different.

21 BY MS. WENDLANDT:

22 Q. Okay. Can I ask you then to turn to page 6 of

23 Exhibit 1. And read to yourself topics 10, 11 and

24 13.

25 A. Okay.

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2 MR. SHIMOTA: I'd also like to note for

3 the record, as you recall, we designated Mr. Avila

4 to speak on topic 13.

5 MS. WENDLANDT: Actually I had a question

6 about that because you also designated Mr. Doyle.

7 Is that a double designation?

8 MR. SHIMOTA: No, we were changing. I'm

9 sorry if there was any confusion.

10 BY MS. WENDLANDT:

11 Q. Okay. So can you read to yourself topics 10 and 11.

12 A. Okay. Okay. I've read it.

13 Q. And have you been designated by Rayovac Corporation

14 to speak on behalf of Rayovac with regard to topics

15 10 and 11?

16 A. Yes.

17 Q. Any other topics listed in this deposition notice? I

18 know you say this is the first time you're seeing

19 this particular version of this document. Can you

20 look at it, pages 5, 6 and 7.

21 A. Read through all of them? Read through all of them?

22 Q. If you don't mind, to yourself.

23 A. And ??

24 Q. Yes, please.

25 A. Yep. I've read it.

2 (Pages 2 to 5)

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2 Q. Having reviewed those lists of topics, have you been

3 designated by Rayovac to speak on behalf of Rayovac

4 with regard to any topics other than topics 10 and

5 11?

6 A. I don't think so. I haven't?

7 MR. SHIMOTA: No, you have not.

8 A. Just the 10 and 11.

9 BY MS. WENDLANDT:

10 Q. I just wanted to make sure because there was some

11 confusion.

12 A. Okay, no.

13 Q. As a result of the designation by Rayovac, do you

14 understand that you're here today to testify under

15 oath not only as to matters personally known to you,

16 Mr. Doyle, but also as to matters known and

17 reasonably available to Rayovac on topics 10 and 11?

18 A. Yes.

19 Q. What did you do to prepare for this deposition?

20 A. I sat with Mr. Shimota.

21 Q. For how long?

22 A. Four hours, five hours.

23 Q. Aside from Mr. Shimota, did you speak to anyone else

24 in preparation for this deposition?

25 A. Briefly on some of the financials, briefly.

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2 (Discussion off the record.)

3 Q. Who did you speak to about the financials?

4 A. Al Choepf.

5 Q. Did you speak to anyone else?

6 A. No.

7 Q. Did you review any documents in your preparation for

8 this deposition?

9 A. Yes.

10 Q. What documents?

11 A. I would -- I wouldn't know what the names are of all

12 the documents. But I -- I would need help on what

13 the documents are. But I have reviewed documents. I

14 reviewed -- I've looked at -- I briefly looked at

15 some of the patents. God, not much more, right?

16 Q. Did you look at the financials?

17 A. Briefly.

18 Q. Okay. Any other subject matter of documents that you

19 can recall?

20 A. (Shaking head.)

21 THE REPORTER: Is that no?

22 A. No.

23 BY MS. WENDLANDT:

24 Q. I need a verbal answer.

25 A. No. You can't take my head?

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2 Q. Mr. Doyle, can you tell me about your educational

3 history starting with college.

4 A. Undergraduate -- where I went to school too, all of

5 that?

6 Q. That would be great and the year that you graduated.

7 A. Undergraduate Boston College 1991.

8 Q. And what was your major?

9 A. Marketing. Minor in German. MBA '94, Northeastern

10 University in Boston, marketing concentration.

11 Q. Between 1991 and '94, were you employed?

12 A. Well, you wanted two years for school. I was

13 employed -- right?

14 Q. MBA is two years, right.

15 A. Okay.

16 Q. Were you employed in '91 to '92?

17 A. Briefly.

18 Q. Okay. Where was that?

19 A. Investors Bank & Trust.

20 Q. And what was your position?

21 A. Mutual fund accountant.

22 Q. Following the receipt of your MBA in '94, were you

23 employed?

24 A. Yes.

25 Q. Where?

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2 A. I'll give you all the places I worked. I did my

3 internship at Kraft in New York.

4 Q. When was that?

5 A. '93. Yeah. Yes, '93 was my first and second year.

6 And then I went to Timex Corporation.

7 Q. When was that?

8 A. After business school, so '94.

9 Q. Having already received the degree you went to Timex?

10 A. Yes.

11 Q. Where was Timex?

12 A. In Connecticut.

13 Q. And how long did you stay there?

14 A. Three years, three plus. Three plus.

15 Q. What was your position at Timex?

16 A. It was a brand -- system brand manager kind of role,

17 traditional coming out of school kind of jobs.

18 Q. And in 1997, '98 where --

19 A. February of '98.

20 Q. February of '98 where did you start?

21 A. Remington.

22 Q. And have you been at Remington continuously --

23 A. Yes.

24 Q. -- since 1998?

25 A. Um-hmm.

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2 Q. And for purposes of this deposition and this case,

3 I'm going to be using the term Rayovac to refer to

4 both Remington and Rayovac because I understand the

5 two have merged.

6 A. The two merged and then the name was changed.

7 Q. That's right.

8 A. So there is no Rayovac any longer. It's Spectrum

9 Brands.

10 MR. SHIMOTA: We can talk about that off

11 the record. That's actually something that -- there

12 is a new corporation.

13 (Discussion off the record.)

14 MS. WENDLANDT: Back on the record.

15 Q. So let me just restate it. For purposes of this

16 deposition, I'm going to be referring to Remington

17 and Rayovac as Rayovac Corporation. And if there is

18 a distinction that you feel is necessary, please let

19 me know and we can clarify the distinction that needs

20 to be made.

21 A. Okay. So anytime Rayovac is mentioned --

22 Q. I'm referring to --

23 A. Referring to Remington which before there was any

24 association with Rayovac?

25 Q. That's correct.

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2 A. Okay.

3 Q. What was your position in February '98 at Rayovac?

4 A. Brand manager.

5 Q. For a particular brand?

6 A. Men's shavers.

7 Q. What were your duties as brand manager?

8 A. To manage a business, P and L responsibility managing

9 the business. Traditional, traditional set-up.

10 Q. What do you mean by the traditional set-up?

11 A. Where the brand team essentially develops the

12 marketing plan, has P and L responsibility, and works

13 with the cross-functional groups to accomplish the --

14 deliver the plan, the financial plan.

15 Q. And how long were you brand manager for men's

16 shavers?

17 A. A couple years. No, a year and a half.

18 Q. What was your next position at --

19 A. Senior brand manager.

20 Q. Can you wait until I finish my question.

21 A. Yeah.

22 Q. What was your next position at Rayovac?

23 A. Senior brand manager.

24 Q. Which you assumed in 2000 about?

25 A. I assumed in '99.

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2 Q. '99. And how long were you senior brand manager?

3 A. Until 2002.

4 Q. And what were your responsibilities as senior brand

5 manager?

6 A. I had the additional responsibility of the accessory

7 business which are the replacement parts, which are

8 the lotions that we make.

9 Q. Any other replacement parts?

10 A. Yes -- oh, any -- I'm sorry, no, that was it.

11 Q. Just lotions?

12 A. Well, lotions and all the parts that you have to

13 replace, all the blades that you have to replace.

14 Q. So again, you were senior brand manager for men's

15 shaving?

16 A. Um-hmm.

17 Q. Okay. And in 2002, what was your position?

18 A. Director, director. Marketing director. Director of

19 marketing.

20 Q. Was that for men's shaving?

21 A. I got added -- added responsibility of women's

22 shavers. And women's groomers.

23 Q. Any other added responsibilities?

24 A. No.

25 Q. Any other added responsibilities for the men's

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2 shaving?

3 A. No, that's -- I had everything.

4 Q. And how long were you director of marketing?

5 A. Less than two years.

6 Q. What was your next position?

7 A. Division vice president.

8 Q. When did you assume that position?

9 A. Officially January 1st, 2004.

10 Q. And what were your responsibilities as --

11 A. Men's -- additional --

12 Q. I'm sorry, what was your -- division?

13 A. Division vice president.

14 Q. What were your responsibilities as division vice

15 president?

16 A. Additional responsibility of the men's grooming

17 business.

18 Q. Any other additional responsibilities?

19 A. Yeah.

20 Q. What were they?

21 A. Let's see, when was -- January '05. Additional

22 responsibilities for the entire personal care group

23 which is hair dryers, curling irons, setters,

24 stylers. And that gave me the entire business, the

25 entire Remington portfolio for North America.

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2 Q. Is that your current position, division vice

3 president?

4 A. Um-hmm. Of total Remington.

5 Q. When did Rayovac first learn of Braun's development

6 of a cleaning system for dry shavers?

7 A. When did we first learn about their development was

8 when they launched the product.

9 Q. And when was that?

10 A. To the best of my recollection, it was with the fall

11 resets during 2000. So retail resets would be

12 August, around July, August of 2000. That's when I

13 remember it being launched and that was the first

14 time I ever knew about it.

15 Q. What are the fall resets?

16 A. That's when the retailers reset their shelves, just

17 like Gillette would do, Braun would do, those come

18 once or twice a year. But in this category once a

19 year.

20 Q. What category?

21 A. Shaving.

22 Q. And how did Rayovac learn about Braun's launch in

23 fall -- in July, August 2000?

24 A. By going to a store and seeing products on the shelf.

25 Q. What did Rayovac do with this information?

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2 A. Nothing initially.

3 Q. And thereafter it did what?

4 A. Monitored the sales of the product as we do with

5 every competitive product.

6 Q. And do you recall what specific product was launched

7 in July, August 2000?

8 A. The Braun Syncro.

9 Q. I'm going to place before you what has been

10 previously marked as Exhibit 10 which is a copy of a

11 patent that I'll refer to as the '328 patent.

12 A. Okay.

13 Q. When did Rayovac first learn of the '328 patent?

14 A. I don't know.

15 (Exhibit No. 45 was marked.)

16 Q. I'm placing what has been marked as Exhibit 45 before

17 you. Have you seen this document before, which is

18 entitled defendant's responses and objections to

19 plaintiff's second set of interrogatories?

20 A. Yes.

21 Q. I'll ask you to turn to fax page 6 which is indicated

22 on the upper right-hand corner. Under the heading

23 response, can you read to yourself the first

24 sentence.

25 A. Subject to its general objections?

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2 Q. Yes.

3 A. Okay. "Subject to its general objections, Rayovac

4 first became aware of U.S. patent numbers 5,711,328

5 and 5,649,556 in late 2001, around the time Rayovac

6 began considering development of a shaving/cleaning

7 system."

8 Q. Does that refresh your recollection as to when

9 Rayovac first learned of the '328 patent marked

10 Exhibit 10?

11 A. Yeah. But were you asking me or the company?

12 Q. I'm asking all of my questions to the company as

13 you've been designated on the topic.

14 A. Okay.

15 MR. SHIMOTA: Maybe just to be clear, do

16 you think you could tell him I'm asking you as

17 Rayovac because certain things you're asking him

18 aren't -- it might be helpful.

19 MS. WENDLANDT: Sure, I thought I was

20 clear, but I can do that in the future.

21 A. Yeah.

22 Q. Sure, when did Rayovac first become aware of --

23 A. In late 2001.

24 Q. -- the '328 patent?

25 A. In late 2001. Okay.

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2 Q. What was the context in which Rayovac first became

3 aware of the '328 patent? Why did Rayovac become

4 aware of the '328 patent?

5 A. Because we were beginning initial development of

6 our -- looking at this idea as a concept and starting

7 investigating Braun's patents.

8 Q. I'm sorry, started to investigate Braun's what?

9 A. To understand what patents Braun had.

10 Q. And what -- you said Rayovac started looking at this

11 idea, what idea?

12 A. The cleaning system idea, investigating our own

13 launch of a cleaning system.

14 Q. And why did Rayovac look in particular to the '328

15 patent, Exhibit 10?

16 A. I'll just say generally they were looking at all of

17 the -- whatever patents existed for the product.

18 Q. So it was Rayovac's understanding that Braun's

19 product that was being marketed starting in July 2000

20 was covered by the '328 patent?

21 A. Yeah -- yes.

22 Q. What did Rayovac do with its knowledge of the '328

23 patent, Exhibit 10?

24 A. They --

25 Q. When it first began looking at it.

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2 A. They investigated all patents to understand, to

3 understand what was -- what was covered or protected

4 under the Braun's cleaning system in order to ensure

5 that no patents were violated.

6 Q. And what did Rayovac learn as to what was covered by

7 the '328 patent?

8 MR. SHIMOTA: Objection, outside the

9 scope.

10 BY MS. WENDLANDT:

11 Q. You can still answer the question.

12 MR. SHIMOTA: You may answer subject to my

13 objection, but you may answer.

14 A. Okay, can you restate the question.

15 MS. WENDLANDT: Can you read it back.

16 (Question read by the reporter.)

17 A. I am not sure.

18 Q. How did Rayovac learn that the Braun Syncro was

19 covered by the '328 patent?

20 A. My understanding via patent searches to understand

21 what patents existed on the product which is

22 protocol -- was protocol for the company for any kind

23 of launch of any product.

24 Q. Any kind of launch of its own products?

25 A. Of its own products, we always did patent searches.

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2 Q. And when you say we, was it something that was done

3 internally at Rayovac?

4 A. It was done -- it was managed via an external party

5 but via an internal source, there was internal

6 general counsel.

7 Q. And who was the general counsel?

8 A. Joel Bedol.

9 Q. And what was the external source?

10 A. Mel Stoltz.

11 Q. Prior to 2001, was Rayovac aware of the application

12 that was filed that ultimately issued as the '328

13 patent?

14 A. Not to the best of my knowledge. We had no idea

15 about the product idea.

16 Q. When did you personally learn of the '328 patent?

17 A. I learned about patents, I can't tell you that it was

18 '328 or any other number, we learned about patents

19 after we conducted our initial search.

20 Q. Is that the search that was conducted internally by

21 Joel Bedol and externally by Mel Stoltz?

22 A. Yes, and Joel Bedol may not have been there. It may

23 have been the previous counsel actually I think

24 through the dates.

25 Q. And who was that previous general counsel?

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2 A. Can I come back to you on that?

3 Q. Yes.

4 A. Okay.

5 (Portion of record read.)

6 Q. Was that initial search the search that you had

7 spoken of earlier that was conducted either by Joel

8 Bedol or his predecessor and Mel Stoltz?

9 A. Yes.

10 Q. Do you personally have any recollection of your first

11 awareness of the '328 patent as opposed to any other

12 patents you may have been looking at issued to Braun?

13 A. This is a personal question to me?

14 Q. That's right.

15 A. Okay. Since I was never -- it was never referred to

16 as a '328 patent, but I was made aware that there

17 were patents that Braun had, certain patents that

18 Braun had. But I didn't know -- I didn't really know

19 any of the real specifics of what they were. That

20 was really the engineer community who managed that

21 via the legal community.

22 Q. And who at the engineer community managed that?

23 A. Yuri Avila would be the person on point.

24 Q. I'm placing before you what has been previously

25 marked as Exhibit 11 which I'll refer to at this

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2 deposition as the '556 patent. When did Rayovac

3 first learn of the '556 patent?

4 A. Again, I'm going to answer it broadly. It's -- they

5 learned about patents in -- during the initial

6 search. So whatever patents were available to be

7 viewed, they found.

8 Q. And that would have been the initial search conducted

9 in 2001?

10 A. Yes.

11 Q. Did Rayovac know of the patent application leading to

12 the '556 patent, Exhibit 11?

13 A. I'm sorry, can you repeat it again.

14 Q. Sure. Did Rayovac know of the patent application for

15 the '556 patent?

16 A. Again, whatever was available they -- Rayovac knew

17 about. So I --.

18 Q. You had stated that Rayovac learned of the '556

19 patent during its initial search in 2001. I'm

20 wondering if prior to that -- prior to 2001 Rayovac

21 had any knowledge of the patent application that was

22 filed with the patent office for the '556 patent?

23 A. Is that a personal question?

24 Q. It's not, it's a Rayovac question.

25 A. I don't know.

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2 Q. And what did Rayovac do with its knowledge of the

3 '556 patent, Exhibit 11?

4 A. Understood the patent and made sure that as we

5 developed our product we didn't violate anything that

6 was protected by the patent.

7 Q. And what did Rayovac determine was protected by the

8 patent?

9 MR. SHIMOTA: Objection, outside the

10 scope.

11 A. The engineering community would be able to answer

12 that better than I could.

13 BY MS. WENDLANDT:

14 Q. And that again would be Mr. Avila?

15 A. Yes.

16 Q. I should also mention that if at any time during this

17 deposition you need to take a break, feel free to let

18 me know and we'll take one.

19 I'm placing before you what has been

20 previously marked as Exhibit 5 which is an E-mail

21 dated October 22nd, 2001, from Robert Schenck to

22 Frank Mercurio. Can you review that.

23 A. You would like me to read the entire document?

24 Q. You can review it. I'm going to ask you some

25 questions about a particular sentence which is the

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2 sentence reading "I will need to review the patents

3 to make sure that our mutual plans are okay."

4 A. Okay. Would you like me to read the balance of this

5 or just the cover?

6 Q. I think if it makes you more comfortable, feel free

7 to review it. But I think the questions are not

8 pertinent to that.

9 A. Okay.

10 Q. Who is Frank Mercurio?

11 A. He is an engineer that works for Yuri Avila.

12 Q. In this -- in his E-mail, Mr. Schenck says to

13 Mr. Mercurio "I will need to review the patents to

14 make sure our mutual plans are okay. I will notify

15 you if I see a conflict. It may impact the plan."

16 Do you see that series of sentences?

17 A. I do.

18 Q. Who is Mr. Schenck?

19 A. I do not know.

20 Q. Do you know whether Mr. Schenck reviewed the patents?

21 A. I do not know.

22 Q. Do you know whether he notified Rayovac of what he

23 found if he reviewed the patents?

24 A. I don't know.

25 Q. Do you know what resulted of his review?

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2 A. I don't know.

3 Q. Okay. Is Mr. Mercurio still at Rayovac?

4 A. Yes.

5 Q. Is he in Madison?

6 A. He is. Can I ask a question just to help me, guide

7 me through this.

8 Q. Sure.

9 A. When you say question related to 10 or 11, is there a

10 way you can make me aware of what that is as the

11 company versus personal questions. It's just me.

12 I'm getting confused on what's my opinion, what's the

13 10 or 11. If you could just help me with that.

14 Q. Sure, sure.

15 A. All right.

16 Q. And you're referring to topics 10 and 11, not

17 Exhibits 10 and 11?

18 A. Right. We're on the 30(b) --

19 Q. (6).

20 A. 30(6)(b) (sic).

21 Q. Sure. Did you review Exhibit 5, the E-mail, in

22 connection with your preparation for this deposition?

23 A. Yes, yes.

24 Q. And what did you learn during your preparation?

25 A. I -- as I stated, I really didn't learn -- really

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2 didn't learn much except read the E-mail.

3 Q. So all you know on behalf of Rayovac Corporation

4 now --

5 MR. SHIMOTA: Wait a second. This is

6 something that Yuri testified about, this falls

7 under topic 13. I don't believe this falls under

8 topic 10 or 11, so he is not here to testify about

9 this on behalf of Rayovac. Yuri testified in detail

10 yesterday about this document. So I'll just make

11 that clear. But --

12 MS. WENDLANDT: Sure. That's helpful to

13 me. Thank you.

14 Q. In connection with your preparation, however, you

15 learned only what's written on this page?

16 A. Correct.

17 Q. Okay. I'll ask you to turn back to Exhibit 45, which

18 is that exhibit right there. Under the heading

19 response, the second full paragraph, states -- sorry,

20 the first full paragraph says, the last sentence "To

21 ensure that Rayovac's initial development work did

22 not conflict with the intellectual property of third

23 parties, Rayovac sought the assistance of Melvin I.

24 Stoltz, an outside patent attorney." Do you see

25 that?

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2 A. Yes.

3 Q. When did Rayovac seek the assistance of Mr. Stoltz?

4 A. Mr. Stoltz has worked with the company for many

5 years; but in this particular matter it was late '01,

6 later part of '01.

7 Q. And who asked -- who at Rayovac asked Mr. Stoltz for

8 assistance?

9 A. It's -- it was a combination of the engineering

10 community and the legal community.

11 Q. And based on your prior testimony, that would have

12 been Mr. Avila --

13 A. Yes.

14 Q. -- and --

15 A. Yes --

16 Q. -- Mr. Bedol or his predecessor?

17 A. Yes. And I'll remember his name before we leave.

18 Q. And what did Mr. Stoltz say to Rayovac about its

19 initial development work?

20 A. Can you be more specific.

21 Q. Sure. It says in the sentence that Rayovac sought

22 the assistance of Mr. Stoltz in connection with its

23 initial development work. I'm wondering if

24 Mr. Stoltz provided any advice with regard to that

25 initial development work?

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2 A. I think that's a question for Yuri to provide

3 specifics.

4 Q. Can you describe the genesis of the idea at Rayovac

5 for creating the titanium Smart Systems cleaning

6 device?

7 A. All right. By genesis, what do you mean?

8 Q. The beginning, you said that in 2000 Rayovac noticed

9 the launch of the Braun Syncro.

10 A. Yes.

11 Q. In 2001 in connection with Rayovac's initial

12 development work, it sought the assistance of

13 Mr. Stoltz and the engineering community to analyze

14 Braun's patents that covered the Syncro?

15 A. Yes.

16 Q. Because at that time Rayovac was considering the

17 launch of its own cleaning system?

18 A. Yes.

19 Q. And I'm wondering what was -- who came up with the

20 idea to launch Rayovac's own cleaning system?

21 A. The idea was already -- the idea was in the

22 marketplace; and as we value every competitive idea

23 and I would have been the person in charge of

24 understanding if competitors had a good idea in the

25 marketplace, so that would have been me.

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2 Q. When you say the idea was already in the marketplace,

3 you're talking about the Braun Syncro?

4 A. I'm talking about the idea of an automatic --

5 something that automatically cleans a product. So

6 when I refer to the idea, I've been trained to

7 develop concepts which are just ideas with no

8 specifics around them. So the idea is that something

9 automatically gets cleaned.

10 Q. And that idea of automatically cleaning an electric

11 shaver was in the marketplace?

12 A. Yes.

13 Q. Who was marketing that idea?

14 A. Braun had it, Braun had it in the marketplace.

15 Q. And what was the embodiment of that idea?

16 A. The embodiment; it was just an automatic cleaning

17 system.

18 Q. In what product?

19 A. In the Braun shaver.

20 Q. Which shaver?

21 A. The Braun Syncro.

22 Q. Okay. And how did you determine that this idea was a

23 good idea in the marketplace?

24 A. By looking at third-party syndicated data which

25 showed that Braun had achieved growth in market share

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2 after years of decline.

3 Q. What was this third-party syndicated data?

4 A. It's scanner data.

5 Q. What is scanner data? I apologize, I'm totally

6 ignorant about this. So what is scanner data?

7 A. Simply it's what goes over the shelf, what goes over

8 the register and then is captured in a centralized

9 database which is then sold to companies like

10 Remington, like Braun, like Gillette, like Norelco,

11 so we can all look at the same numbers.

12 Q. And who sells this database?

13 A. There are a number of companies that sell it. There

14 is NPD is a company we use. Nielsen or -- Nielsen is

15 another company that provides this type of data.

16 NIELSEN.

17 Q. What precisely does this data tell you, the number of

18 units being sold?

19 A. Units being sold, number of dollars being sold.

20 Q. And what about this data led you to conclude that the

21 idea of automatic cleaner was a good idea in the

22 marketplace?

23 A. They had sold considerable amount of units and

24 dollars.

25 Q. Braun?

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2 A. Yes.
3 Q. And when did you arrive at that conclusion?
4 A. Sometime in '01, middle of '01, approximately.
5 Q. How often do you get this scanner data?
6 A. Every month.
7 Q. Is it divided by product, by idea, how is it divided?
8 A. Everything. By product, by brand, by SKU which is
9 product.
10 Q. Any other category?
11 A. What --
12 Q. Product, brand, SKU.
13 A. Not -- category -- well, category but that would --
14 that's it, that's it.
15 Q. And what did you do after you concluded that this
16 idea was a good idea in the marketplace?
17 A. We began, we began initial -- looking -- we began to
18 understand -- answer?
19 MR. SHIMOTA: Yeah, sure.
20 A. We began looking at ways to build our own system.
21 BY MS. WENDLANDT:
22 Q. Who was involved in that effort?
23 A. Engineering, legal, marketing. Those were the
24 general groups that were managing -- would be
25 managing it.

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2 Q. Who was in the marketing group managing the project?
3 A. There was me. There was -- let's see, is this '01?
4 There -- an assistant of mine.
5 Q. Who is that?
6 A. I'm so bad with names. I'll remember the name.
7 Q. Is it Peter Katz?
8 A. Was Peter on the project at that time? No. Not yet.
9 Q. So you and an assistant, anyone else?
10 A. No.
11 Q. How about on the engineering team?
12 A. Yuri and his team and I'm not sure exactly, there are
13 a number of people in that group. Yuri's my contact.
14 Q. And on the legal team?
15 A. It would be in '01, again, it's -- I'm not clear on
16 the timing. It's either Joel or his predecessor.
17 Q. Joel Bedol?
18 A. Joel Bedol, yes. I'm so bad with names.
19 Q. I'm placing what has been previously marked as
20 Exhibit 2 before you. Have you seen this document
21 before?
22 A. I believe I have.
23 Q. Do you recall when?
24 A. I would have been involved with the project from the
25 beginning, so --

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2 Q. So around -- this is dated revised August 21, 2001.
3 A. It was -- yeah, it was revised since the previous
4 meeting a week earlier. It was -- this is about the
5 start of when this all started, you know.
6 Q. So this Exhibit 2 refreshes your recollection that
7 this is about August 2001 when Rayovac began its
8 initial development work on its own cleaning system?
9 A. Before any development work starts, we actually also
10 concept test our ideas typically. I can't remember
11 if we did for this. But there would usually be some
12 time before it actually went to the engineering group
13 to understand the marketing -- if there was a market
14 for the product.
15 Q. And if any concept testing had been done for the
16 cleaning, for Rayovac's own cleaning system, where
17 would -- would that have generated any documents?
18 A. It would have but I'm not sure we did -- I'm not sure
19 that we -- I'm not sure that we -- I'm not sure that
20 we did it for this. I think we may have started the
21 system after this.
22 Q. How would you determine whether or not Rayovac did
23 concept testing?
24 A. Well, we must not have done it because we searched
25 our files, all my files were searched.

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2 Q. Under objective in Exhibit 2, it says provide
3 Remington electric shavers consumers -- I'm sorry,
4 provide Remington electric shaver consumers a
5 convenient cleaning/recharging unit; do you see that?
6 A. Yes.
7 Q. Why did Rayovac want to provide its customers with a
8 cleaning/recharging unit?
9 A. Because the market accepted the Braun cleaning system
10 as a strong idea, a strong concept.
11 Q. Prior to the Braun cleaning system, had Rayovac
12 considered providing its customers with a
13 cleaning/recharging unit?
14 A. No. We had considered ways to make it easier to
15 clean the product, but we had not considered this --
16 sort of a cleaning system.
17 Q. What ways had you considered to make it easier to
18 clean a product?
19 A. Well, one of the things that we actually launched, I
20 think we -- I believe we were first in foils was to
21 make the shavers washable so you can rinse them under
22 the sink. So I believe we were -- pretty sure we
23 were first to market with that, the actual
24 cleaning -- the actual utilization of water -- or
25 liquid to clean it, to clean the shaver which had

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2 previously not existed.

3 Q. And that washable foil shaver, it was water that was

4 used?

5 A. Yes. It would be whatever -- it would be whatever

6 you'd like to put on it. I mean the housing was, was

7 proofed so no water could get into it.

8 Q. Waterproofed?

9 A. Waterproof is a term, but it was proofed against

10 liquids.

11 Q. Sealed?

12 A. Yeah, sealed. Sealed. So that was actually I

13 believe our idea first.

14 Q. And did Rayovac actually launch that product?

15 A. Yes.

16 Q. And how was it received in the marketplace?

17 A. Terrific. Our share went up three share points that

18 year.

19 Q. What year was that?

20 A. That was 2000 on the foils. So that was the year

21 before the Syncro was launched. We had our version

22 of a more manual but a cleaning device as a system

23 that would be cleaned.

24 (Recess taken from 9:58 to 10:02 a.m.)

25 BY MS. WENDLANDT:

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2 Q. I'm asking you to turn your attention to Exhibit 2.

3 Under specifications.

4 A. Right here? That's right here?

5 Q. Yes. Under specifications, that bullet says size no

6 larger than the Braun Syncro unit. Do you know why

7 the size constraints of Rayovac's cleaning/charging

8 system would have been a function of the Braun

9 Syncro?

10 A. I believe our judgment was that the Braun was too big

11 for the counter, and so we wanted something that was

12 smaller and a little more elegant and that wouldn't

13 be as obtrusive. But I believe that was just

14 judgment on our part.

15 Q. Not based on any consumer or -- testing?

16 A. Yes. That's right.

17 Q. Now, this next question may be again for Mr. Avila,

18 but since you were part of at least the initial

19 effort I thought I'd ask you as well. I'm placing

20 before you Exhibit 4 which is a document dated

21 October 12th, 2001, entitled shaver cleaner and

22 charger system. Have you seen this document before?

23 A. I have not.

24 Q. Were you aware of the -- looking at the bottom of the

25 first page there is what appears to be a cleaning

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2 system. Do you see that?

3 A. Yes.

4 Q. Were you aware of this cleaning system concept being

5 considered at Rayovac?

6 A. I have never seen this. I have never seen this. So

7 I can't really comment.

8 Q. Do you know if Rayovac ever considered having a

9 cartridge for its cleaning fluid container?

10 A. Yes, we did at one point.

11 Q. And was that cartridge concept rejected?

12 A. Yes, it was.

13 Q. Why?

14 A. I believe it was deemed to be in violation of the

15 Braun patent.

16 Q. Do you know which one?

17 A. No.

18 Q. And who deemed it to be in violation of the Braun

19 patent?

20 A. I believe outside counsel.

21 Q. Was that Mel Stoltz?

22 A. Yes.

23 Q. I'm placing before you what has been previously

24 marked as Exhibit 6 which appears to be several

25 photographs of a cleaning system or a prototype of a

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2 cleaning system. Have you seen this prototype?

3 A. I have not.

4 Q. Have you seen these photos before?

5 A. I have not. I have not seen the photos or prototype

6 or anything of this sort.

7 Q. Are you aware of any such prototype being developed

8 at Rayovac?

9 A. No.

10 Q. I'm placing before you what has been previously

11 marked as Exhibit 39. Have you seen this document

12 before?

13 A. Yes.

14 Q. It's entitled marketing plan 2003 men's shaver.

15 A. Yes.

16 Q. When did you first see this document?

17 A. Fall '02.

18 Q. Why?

19 A. Since -- because I wrote most of it.

20 Q. Okay. And --

21 A. Or wrote most of it or directed it to be written, a

22 combination of.

23 Q. On the first page, paragraph labeled B, products.

24 A. On which? I'm sorry.

25 Q. First page, paragraph B products, it says, quote, "We

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2 must launch a new high-end foil and rotary shaver

3 with cleaning system." Do you see that?

4 A. Yes.

5 Q. Why did Rayovac need to launch a new high-end foil

6 and rotary shaver with cleaning system?

7 A. We deemed it to be a consumer need that we weren't

8 addressing with our current assortment of products.

9 Q. Including the washable foil shaver that you had

10 launched in 2000?

11 A. Um-hmm. Yes.

12 Q. Asking you to turn your attention to the next page,

13 page labeled R 12413.

14 A. Yes.

15 Q. Under number 1, cleaning system, do you see that?

16 A. Yes.

17 Q. It says, quote, "The cleaning concept is a winning

18 idea based on the following reasons."

19 A. Yes.

20 Q. And then the next bullet is in market results, the

21 Syncro cleaning system continues to grow.

22 A. Yes.

23 Q. Why was that important?

24 A. Why is that important?

25 Q. Yes, why was it important to note that the Syncro

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2 cleaning system continues to grow?

3 A. Because that's the way you understand what your

4 competitors are doing and how they're performing,

5 which is just a fundamental of running a business.

6 Q. What's the connection between the Syncro cleaning

7 system continued growth and the cleaning concept

8 being a winning idea?

9 A. What's the connection?

10 Q. Yes.

11 A. One is an in-market validation by a competitor, that

12 would be the first bullet point. And the second is

13 an internal validation using our internal concept

14 testing methodology.

15 Q. Are you referring to that second bullet?

16 A. Yes, yes.

17 Q. Consumer testing?

18 A. Um-hmm.

19 Q. Does this refresh your recollection as to whether any

20 concept testing was done for the --

21 A. Yes, but --

22 Q. Sorry, for the Rayovac cleaning system?

23 A. Yes. But the question was on timing, the question

24 was on timing. As I stated previously, I wasn't sure

25 exactly the timing. I knew we had done testing at

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2 some point, but I'm not sure exactly if it was '01 or

3 '02, exactly when it was. And so, yeah, absolutely

4 we did testing at some point in the continuum.

5 Q. And what tests were done?

6 A. We had a standard concept testing format where we --

7 Q. Where you what?

8 A. Where we -- where we wrote a concept and tested with

9 consumers.

10 Q. And what was the concept that was tested?

11 A. It was -- the idea was a self-cleaning shaver system.

12 Q. How did you present that to a consumer who was being

13 asked to take this test?

14 A. On a sheet of paper on line.

15 Q. Was there a drawing of the device?

16 A. No. There was not.

17 Q. Just a statement on a sheet of paper that said --

18 what?

19 A. A statement.

20 Q. Said what?

21 A. Well, we have a format which has a few pieces to it.

22 Q. Can you describe it?

23 THE WITNESS: Do I need to share that? I

24 mean that's our internal --

25 MR. SHIMOTA: There is a protective order

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2 in the case, so your testimony will be designated

3 highly confidential so only the outside lawyers can

4 see it.

5 A. Sure. It's a testing methodology for Procter &

6 Gamble which essentially there is -- since our whole

7 marketing -- since everybody has confidence in

8 Procter & Gamble. And what it is is a concept test

9 starting -- concept statement starting with

10 introducing -- introducing the idea, self-cleaning

11 shaver, you talk about what it does, what's the

12 benefit and then what's the support on -- a brief

13 description of how it works, very generic. And

14 that's it. And then a price point. And then you

15 get, and then you get -- and we test it on line

16 quantitatively and you get scores back.

17 BY MS. WENDLANDT:

18 Q. So is a consumer presented with the option, you know,

19 1 through 10 how much --

20 A. No, no.

21 Q. So how do you --

22 A. They're presented with an idea --

23 Q. How do you test it on line quantitatively then?

24 A. It's a standard format.

25 Q. Which I don't understand so if you could explain it

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2 for me.

3 A. Okay. You present a concept to the consumer. They

4 either -- they rate it on a scale of what -- they

5 like it or don't like it. And then you end up with a

6 number. And the -- and there are four metrics which

7 test which are purchase intent, believability,

8 uniqueness, and likability.

9 Q. And who administers this test?

10 A. A third-party.

11 Q. Who is that?

12 A. I can't remember who we used at the time. There are

13 several firms that we used over the years. But they

14 don't actually add any value. They just administer

15 the test on line via panel.

16 Q. And what was the scale, and just specifically with

17 regard to Exhibit 39, it says that the cleaning

18 system concept tested exceptionally well scoring the

19 best of all concepts, 5.7 out of 7 on purchase

20 interest scale.

21 A. Right.

22 Q. What does that mean?

23 A. On this particular test where this was tested there

24 was a 1 to 7 scale, and so it received -- and the top

25 would be, you know, definitely would buy, probably

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2 would buy, maybe would buy, on a 7 point scale down.

3 And so this one scored very, very high. Round

4 numbers, 6 out of 7.

5 No business person ever sees this, right?

6 MR. SHIMOTA: No.

7 MS. WENDLANDT: Not from Braun.

8 MR. SHIMOTA: The designation at the

9 bottom, that's what that means. Attorneys' eyes

10 only. You can see it right there.

11 THE WITNESS: Yeah, I know, but I'm not an

12 attorney.

13 MR. SHIMOTA: Sure, but you're a business

14 person from Rayovac.

15 BY MS. WENDLANDT:

16 Q. And you wrote it.

17 A. I know.

18 Q. The third-party, and I know you don't know who it was

19 for this particular test, who conducts this test on

20 line, how do they present the results to Rayovac? Is

21 there a report, do they give you each consumer that

22 they tested and their numbers or how do they do it?

23 A. They give us a report. We have to pull it off on

24 line, we just have to pull it, it's on computer data

25 base often times. But yes, you can -- there is

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2 some -- there is some form of report that

3 typically -- that you typically get. Either you pull

4 it yourself or you have it produced.

5 Q. And did you give to your counsel the report for this

6 particular consumer test?

7 A. I'm not sure, I'm not sure.

8 Q. And how long are these tests kept on line?

9 A. How long does the test run?

10 Q. No, the report that you said --

11 A. How long is it maintained?

12 Q. That's correct, yeah, how long is the report

13 maintained?

14 A. On line?

15 Q. Yes.

16 A. I don't know. But -- I don't know.

17 Q. Okay. And do you know if there was a hard copy of

18 this report that may be in your files?

19 A. I'm not sure. I'm not sure -- I'm not sure where it

20 would be.

21 Q. Okay. The next sentence in this Exhibit 39 is

22 "Additionally, based on our Scout panel data, the

23 Syncro cleaner" underlined cleaner "had very high

24 satisfaction scores, 69 percent top box, average

25 feature top box 43 percent." Can you tell me what is

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2 meant by that sentence?

3 A. Sure.

4 Q. First what is the Scout panel data?

5 A. It's an attitude and usage study, also known as an

6 A and U, that most fairly sophisticated businesses

7 would conduct either annually or biannually where you

8 understand what your competitors -- understand what

9 your competitors are doing. And so in this case, one

10 of the metrics that we have is satisfaction for all

11 competitive products, every single SKU in the entire

12 category. Remington's or the competition, Norelco or

13 Braun or anybody else.

14 Q. And is Scout a company that provides this data?

15 A. Yes. And it's proprietary to us.

16 Q. To Rayovac?

17 A. Yes. But anybody could run the same study and should

18 generate the same results.

19 Q. And what does the 69 percent top box satisfaction

20 score mean?

21 A. Extremely satisfied. 69 percent or extremely

22 satisfied.

23 Q. It was 69 percent of the consumers that Scout tested

24 were extremely satisfied, is that what you mean?

25 A. 69 percent of the respondents to the study that were

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2 Braun Syncro owners responded favorably.

3 Q. And what does it mean that the average feature top

4 box is 43 percent?

5 A. I'm not sure.

6 Q. Do you have an understanding what that means?

7 A. No, no, I do, yes. What it means is there are a

8 number of product attributes, in other words, a

9 shaver has an LED, a light, it has an on/off button,

10 it has a lot of features. And so the cleaning -- the

11 cleaning feature was isolated and it scored better

12 than the typical features you find on a shaver.

13 Hopefully that clarifies it.

14 Q. And that's why the cleaning is underlined in that

15 sentence -- or Syncro cleaner is underlined, is that

16 what you mean?

17 A. Yes. That's why clean -- yes, that's right. Because

18 referring to the -- not to the product, but to the

19 feature.

20 Q. Okay. Turning your attention to page 12419, under D

21 distribution.

22 A. Yes.

23 Q. And then on to -- actually, would you turn to the

24 next page, under the check mark Syncro success.

25 A. Yeah.

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2 Q. Can you read that sentence to yourself.

3 A. Um-hmm.

4 Q. Why was it important to distribution to show how

5 successful the Braun Syncro had been over the past

6 two years?

7 A. Let me just -- let me put it in the context of the

8 entire paragraph.

9 Q. Sure.

10 A. Okay. Restate your question again.

11 (Question read by the reporter.)

12 A. Anytime there is an existing success story in any

13 category, utilizing category management approach you

14 would expand whatever has been successful. So it

15 would be utilizing category management technique when

16 you expand successful segments and you contract not

17 successful segments. That's how you would approach

18 distribution in a sophisticated way using fact based

19 approach.

20 Q. What are these category management techniques that

21 you're referring to in your last answer?

22 A. It would be to help set the shelf according to what

23 consumers are buying. So if consumers are moving

24 towards a new segment, in this case, cleaning systems

25 are a growing segment, you want to encourage the

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2 retailer to expand the presence in that area.

3 Q. And the way you would encourage retailers to expand

4 their presence in the cleaner area would be to show

5 how successful the Syncro had been?

6 A. Yes.

7 Q. Under the next check mark, it says consumers want a

8 Remington cleaner. What does that mean?

9 A. We -- we previously stated we conducted concept

10 testing under the Remington brand. And under the

11 Remington brand the product concept scored very, very

12 well.

13 Q. And what need was being met by the Remington cleaner

14 that -- what was the need that was being met by the

15 Remington cleaner?

16 A. The ability -- the ability to automatically clean the

17 shaver.

18 Q. Is that in contrast to other cleaning methods that

19 were out there before?

20 A. Yes.

21 Q. Including the washable foil shaver that you had

22 introduced in 2000?

23 A. Yes.

24 Q. Placing before you what has been previously marked as

25 Exhibit 41.

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2 A. Should I close this?

3 Q. We're all done with -- yes. Which is a document

4 entitled 2003 business review men's shaver.

5 A. Yep.

6 Q. Did you have -- take part in authoring this document?

7 A. Yes.

8 Q. What was your role?

9 A. I authored the majority of it.

10 Q. Asking you to turn your attention to page 12432.

11 A. Yes.

12 Q. The paragraph under section B starting with although

13 the Syncro. Can you read that to yourself.

14 A. Yes.

15 Q. That paragraph indicates that consumers had two

16 issues with the cleaning system, the Braun Syncro.

17 The first was that the cleaning cycle was too long.

18 Why was that important for -- or why did you point

19 that out in this Exhibit 41?

20 A. Why did I point that out?

21 Q. Yeah, why did you think it was significant to point

22 that out in this Exhibit 41?

23 A. These were two dissatisfiers from a combination of

24 judgment and some consumer feedback that we had with

25 regard to the Braun system.

<p style="text-align: right;">Page 50</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 Q. And why was it important to point out dissatisfiers?</p> <p>3 A. In order to give the consumer what they wanted in</p> <p>4 terms of a cleaning system.</p> <p>5 Q. So was Rayovac intending to solve these dissatisfiers</p> <p>6 with its own cleaning system?</p> <p>7 A. Yes, we were intending to make our product -- to --</p> <p>8 yes, to understand what the dissatisfiers were and</p> <p>9 address them in our product.</p> <p>10 Q. And did Rayovac address the cleaning cycle is too</p> <p>11 long to satisfy in the product that it ultimately</p> <p>12 launched?</p> <p>13 A. That's a Yuri question. That's a -- that's a Yuri</p> <p>14 question.</p> <p>15 Q. And with regard to the second dissatisfier, was that</p> <p>16 something that Rayovac addressed in its own cleaning</p> <p>17 system that was ultimately launched?</p> <p>18 A. I believe we improved it.</p> <p>19 Q. You improved --</p> <p>20 A. Minimized dissatisfaction.</p> <p>21 Q. Minimized spilling?</p> <p>22 A. Minimized dissatisfaction of spilling.</p> <p>23 Q. And how did Rayovac do that?</p> <p>24 A. It's a technical question. Having to do with the</p> <p>25 construction of the product. I would defer that to</p>	<p style="text-align: right;">Page 52</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 with its development of the cleaning system?</p> <p>3 A. From a commercial perspective, in other words, is it</p> <p>4 commercially viable? The answer is I don't -- no, I</p> <p>5 don't think so.</p> <p>6 Q. What other kind of market studies are you aware of?</p> <p>7 A. I'm not. I'm not aware of any other thing related to</p> <p>8 decision to launch such a product which would fall</p> <p>9 into my camp to the best of my recollection.</p> <p>10 (Exhibit No. 46 was marked.) --</p> <p>11 Q. I've placed before you what has been marked as</p> <p>12 Exhibit 46 which is a document dated June 20, 2002,</p> <p>13 entitled marketing basis of interest form. Have you</p> <p>14 seen this Exhibit 46 before?</p> <p>15 A. I believe I have.</p> <p>16 Q. Under paragraph 1 market opportunity, it says, quote,</p> <p>17 "Taking advantage of the success Braun Syncro has</p> <p>18 had." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What is meant by that statement?</p> <p>21 A. I think it's consistent with what I said before which</p> <p>22 is just capturing -- which is leveraging the strength</p> <p>23 of the Braun in market performance, leveraging that</p> <p>24 concept which consumers gravitate to. That's what</p> <p>25 that means.</p>
<p style="text-align: right;">Page 51</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 Yuri.</p> <p>3 Q. So in the indicated action section, it says our</p> <p>4 shaver will have superior cutting performance while</p> <p>5 our cleaning system will have a shorter running time</p> <p>6 and spillproof base. Do you see that?</p> <p>7 A. Um-hmm, yes.</p> <p>8 Q. You don't know whether or not your product actually</p> <p>9 has a shorter running time?</p> <p>10 A. I don't.</p> <p>11 Q. And you don't know whether or not your product has a</p> <p>12 spillproof base?</p> <p>13 A. I know that it's -- I don't know. I don't know. I</p> <p>14 don't -- it's -- I'm not sure.</p> <p>15 Q. What did you mean in this document when you said</p> <p>16 spillproof base?</p> <p>17 A. I think you can literally take the translation of</p> <p>18 spillproof.</p> <p>19 Q. So you can turn it upside down and it doesn't spill?</p> <p>20 A. That's why I can't answer it. Because it's all the</p> <p>21 ways the consumers use it. It's spillproof if used</p> <p>22 properly, it's less so if it's not.</p> <p>23 Q. Okay. Aside from this on line concept testing and</p> <p>24 the Scout data, were there any other market studies</p> <p>25 that Rayovac conducted or consulted in connection</p>	<p style="text-align: right;">Page 53</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 Q. Under consumer needs, it refers to Insight Product</p> <p>3 Development.</p> <p>4 A. Yes.</p> <p>5 Q. What is that?</p> <p>6 A. Insight Product Development is an external firm that</p> <p>7 was helping with the identification of a new shaver</p> <p>8 platform.</p> <p>9 Q. And in connection with the cleaning system and the</p> <p>10 charging system that Rayovac was developing, what</p> <p>11 does it mean that the concept received the highest</p> <p>12 scores in our external research -- in our recent</p> <p>13 external research program with Insight Product</p> <p>14 Development?</p> <p>15 A. I believe the scores that were previously shown were</p> <p>16 actually part of this Insight Product Development</p> <p>17 program.</p> <p>18 Q. Was that the 5.7 out of 7?</p> <p>19 A. Yes.</p> <p>20 Q. So that would have been the on line report that we</p> <p>21 were discussing?</p> <p>22 A. Yeah. I believe they did it on line as well. We</p> <p>23 also did things internally. But I believe during</p> <p>24 this time period we used this firm to do all of that</p> <p>25 kind of research.</p>

14 (Pages 50 to 53)

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2 Q. What is the point of Exhibit 46? Was there a

3 presentation made or -- ?

4 A. No. This is, this is a document to start thinking

5 about a new -- to start thinking about a new idea, so

6 this is an internal form. It doesn't actually -- I

7 don't believe this actually kicks off any project.

8 But I believe it kicks -- it attempts to gain the

9 company's support as an idea is the way I recall this

10 form, the way this form is being used.

11 Q. And who at the company is this form intending to gain

12 support among?

13 A. It would just be an initial screen, it would just go

14 into the marketing department which would not kick

15 off any project because that would require many, many

16 cross-functional people to sign off on a product.

17 before it started. This is just we think we have an

18 idea.

19 Q. And you see this is dated June 20th, 2002.

20 A. Yes.

21 Q. Whereas the previous exhibit we looked at regarding

22 the Rayovac cleaner and charger was dated August

23 2001.

24 A. Yeah.

25 Q. What explains the --

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2 A. About a month time period? I'm not sure. That one

3 was -- it was about a month difference, right, five

4 or six weeks?

5 Q. I'm referring to Exhibit 2 which you have in your

6 pile. It's actually almost a year difference.

7 A. Oh, I'm sorry. I was in the wrong year. I'm sorry.

8 I was in the wrong year.

9 Q. Sure. Yeah.

10 A. All right. Restate your question, please.

11 Q. I guess what explains the time lag between Exhibit 2

12 which is dated August 21st, 2001, discussing the

13 Rayovac cleaner and charging system and this market

14 basis of interest form which is dated June 20th,

15 2002?

16 A. I am not sure. I was trying to remember back in

17 history and I'm struggling with what would have been

18 the reason for the difference. I know that we did

19 reorganize the company and created a global product

20 development group of which Peter Katz actually ran.

21 But I just don't know. I just honestly don't know.

22 Q. And you mentioned the global product development

23 group because it was created in between these

24 periods?

25 A. Yes. It was created in between these periods. And

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2 so that's what I'm struggling with.

3 Q. I'm placing what has been previously marked as

4 Exhibit 36 before you. And I ask you to direct your

5 attention to the item number 8, cost and training

6 prices, target prices.

7 A. Yes.

8 Q. If you wouldn't mind, if you could compare those to

9 the target prices in Exhibit 46.

10 A. Okay.

11 Q. What accounts for the difference in these target

12 prices? Why are they so different?

13 A. Which ones are you referring to?

14 Q. Well, let's start with the current standard cost.

15 A. It's just a mistake.

16 Q. Which is a mistake?

17 A. The current standard cost. It's not a reasonable

18 number.

19 Q. In Exhibit 46?

20 A. Yes.

21 Q. Okay. So Exhibit 36 is more reasonable?

22 A. Yes.

23 Q. Under number 9, forecast information, again,

24 comparing Exhibit 36 to 46, you see that for each

25 year the forecast information in dollars and units is

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2 significantly higher in Exhibit 36 than it was in

3 Exhibit 46. Do you know what accounts for the

4 forecast information differential between the two

5 documents?

6 A. I'm not. I'm not. Document 36 is a more reasonable

7 document, closer to reality.

8 Q. And you base that on what?

9 A. Based on more typical margins, what it would --

10 knowing from experience what a product costs to make

11 and what the typical margins are, including the

12 volumes. The volumes are much more reasonable on

13 document Exhibit 36.

14 Q. How did Rayovac initially determine what price to

15 sell its cleaner to the trade at?

16 A. To the trade or to the consumer?

17 Q. We'll start with to the trade.

18 A. Well --

19 Q. I'm assuming the trade is Wal Mart.

20 A. Yeah, but --

21 Q. No? Can you explain the difference?

22 A. The consumer is what the consumer is willing to pay.

23 You always have to start with the consumer.

24 Q. So your price to the trade would be a function of the

25 price to the consumer?

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2 A. Completely.

3 Q. And how did you determine what price the consumer

4 would be willing to pay for the Rayovac --

5 A. Are we referring to the rotary shaver or the foil?

6 Q. For the rotary.

7 A. For the rotary?

8 Q. Yeah.

9 A. We looked at our own offerings and Norelco's

10 competitive offerings and then assigned a value which

11 was about 30, about \$30 of value to the cleaning

12 system.

13 Q. And how did you determine the \$30 value to the

14 cleaning system?

15 A. It was approximately the difference between the Braun

16 with cleaner and without cleaner. That was about the

17 difference.

18 Q. I'm sorry, with and without cleaner?

19 A. Yeah. Braun has most of their business actually

20 outside of cleaners. So we looked at the difference

21 between with a cleaning system versus a shaver

22 without, albeit products were slightly different.

23 Q. Okay. And how did Rayovac determine the pricing for

24 its foil cleaning system?

25 A. We used the same -- we used the same system where the

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2 cleaning system was worth approximately \$30 and

3 looked at that versus our existing shavers without,

4 and that was about the difference.

5 Q. So you looked at Rayovac's own foil shaver offerings?

6 A. Right. Without a cleaner.

7 Q. Without a cleaner?

8 A. And then assigned a value of about \$30,

9 approximately.

10 Q. Well, in connection with the rotary pricing, you

11 looked at Norelco's offerings as well. Did you look

12 at any other competitor offerings?

13 A. We did. But the offerings in foils are so very

14 different between the competitors. Braun only offers

15 dual foils, so every product in the -- two foils

16 instead of three and so it was much more difficult to

17 do because Braun essentially has the same product

18 from a \$40 shaver all the way up to over a hundred

19 dollars is essentially the same product and it's

20 just -- it's a lot -- more difficult to gauge versus

21 our product line which has a, you know, has a single

22 foil, a two foil and a triple foil. So it was much

23 more difficult to compare that way versus on the

24 rotary side where it's much more of a -- it's much

25 easier to compare the features because they're all

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2 triple foil -- triple-edged shavers. Now --.

3 Q. Do you need to take a break?

4 A. No. I was going to add just one thing on the

5 pricing.

6 Q. Yes.

7 A. Our pricing on the rotaries was about \$30 higher than

8 the cheapest foil cleaning system from Braun at the

9 time. \$30 more expensive. So we were 129, they were

10 99. Okay?

11 Q. In setting the pricing, was that a consideration that

12 you were coming in at a higher price?

13 A. Not for the rotary. But on the foil, I guess my

14 point is to some degree we looked at that, what Braun

15 had been doing with the pricing. And Braun had

16 already taken the market -- taken the pricing in the

17 market down considerably on foils which drove our

18 pricing -- which drove our pricing strategy to some

19 degree.

20 Q. You priced downward as well, is that what happened,

21 to match --

22 A. They -- Braun took the market down.

23 Q. Yes.

24 A. And so when we launched our products --

25 Q. The foil?

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2 A. The foil, it was priced closer to -- lower than the

3 rotary offering because Braun had taken the market

4 down on their own for whatever reason.

5 Q. Sheer generosity.

6 A. Yes.

7 Q. Prior to Braun's cleaning system, you mentioned that

8 Rayovac launched its own washable foil system. Were

9 you aware of any other cleaning systems for electric

10 or dry shavers?

11 A. Cleaning system -- the washable feature as a system

12 because the washable feature is not a system, it's

13 just -- it's a feature.

14 Q. Yes. Were you aware of any --

15 A. Yes. Norelco had about at the same time launched a

16 washable shaver.

17 Q. About 2000 you mean?

18 A. Yes. About that time.

19 Q. And how did that shaver function?

20 A. How did it physically work?

21 Q. No, not the shaver itself. I guess maybe I should

22 clarify. How did the washability feature of it work?

23 A. You would open the head and rinse it under water or

24 pour whatever cleansing agent you wanted to put on it

25 with some restrictions.

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2 Q. And how was the Norelco washable shaver received in

3 the marketplace?

4 A. In 2000. Not as strongly as ours. Our market share,

5 as I said, went up three share points when we

6 launched that. I believe Norelco's went down.

7 Q. Were you aware of any other dry shaver systems with

8 the cleaning feature?

9 A. No. Oh, I'm sorry, I'm sorry. Yes, with the -- all

10 right. Let me clarify. Panasonic makes a shaver

11 that is intended to be used in the shower. So you

12 can get it wet, but it's not marketed as a shaver

13 that you clean. It's just used in the shower, versus

14 our product which was specifically marketed and

15 designed to be washable, cleanable. But using other

16 forms besides, you know, blowing it out or tapping it

17 out as consumers had done for many, many years.

18 Q. Do you know what time frame the Panasonic shower

19 shaver was introduced?

20 A. Oh, it's been around for many years. And in fact

21 Remington had had in-the-shower shavers going back to

22 the early '90s. But they were designed for shower

23 use versus putting it under water and letting it get

24 cleaned out. They were just different -- if you open

25 one of our packages or even on the outside on the box

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2 it would say -- it would show you how to use it. It

3 was an important feature.

4 Q. The shower feature?

5 A. No, the cleaning feature.

6 Q. The cleaning feature. Okay.

7 A. Yeah.

8 Q. And do you know how the Panasonic shower shaver was

9 received when it was launched?

10 A. They had a 7 percent market share for a long, long

11 time. And then -- and now they have virtually no

12 share. But when it was launched it was just -- they

13 have always been a third or fourth player in the

14 category.

15 Q. And again, you think it was launched in the early

16 '90s?

17 A. Ours was. Panasonic's may even have been before

18 that.

19 Q. In the development of Rayovac's cleaning system, did

20 Rayovac consider devices for sterilizing barber

21 tools?

22 MR. SHIMOTA: Objection, vague.

23 BY MS. WENDLANDT:

24 Q. You can answer.

25 A. I'm not sure what any of this means.

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2 Q. Do you know if in the development of Rayovac's

3 cleaning system it considered devices for sterilizing

4 barber clippers or any devices used by barbers?

5 A. Not that I'm aware of.

6 Q. Why not?

7 A. I don't know.

8 Q. I'm placing before you what has been previously

9 marked as Exhibit 7, which is an E-mail from Peter

10 Katz to Jeff Hovis dated August 23, 2002. Hovis is

11 H O V I S. Have you seen this document before?

12 A. I think I have, yes.

13 Q. Turning your attention to paragraph 2 A, if you

14 follow the chain of E-mails, it looks to me that

15 Mr. Katz is saying, quote, "I'm only interested in

16 making claims associated with cleaning the actual

17 shaver similar to the of Braun." Do you see that?

18 A. Um-hmm.

19 Q. Why was Mr. Katz only interested in making claims

20 similar to Braun's?

21 A. I'm not sure that's what it says.

22 Q. Okay. What is your understanding of what it says?

23 A. It says we're only interested in making claims

24 associated with the cleaning of the actual shaver

25 that is part of the package sold. And it just

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2 references similar to Braun, doesn't even seem like

3 it's part of the actual -- it seems like it's just an

4 add-on. But it doesn't seem as part -- the idea here

5 is to avoid I guess levels of regulation. I don't

6 know that it's referring to any comparison to Braun,

7 it's just saying that's the way that Braun has also

8 approached the project would be my interpretation of

9 that sentence.

10 Q. Okay. And in paragraph 2 B where Mr. Katz appears to

11 be saying Braun appears to be treating their product

12 as a household cleaning product.

13 A. Yes.

14 Q. Why is Mr. Katz pointing out Braun's treatment of its

15 product?

16 A. I would assume it's the only comparative similar

17 product on the market. So it would be foolish not to

18 look at the competitive product in order to

19 understand what they're trying to do or have done.

20 Q. And on the next page, paragraph 6, discussing the

21 pricing point for Rayovac's at that time proposed

22 cartridge, Katz says, quote, "same as Braun with

23 perhaps the opportunity to come in under them." Do

24 you see that?

25 A. Yes.

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2 Q. Why again was Mr. Katz making a comparison to Braun's

3 cleaning solution?

4 A. Because I believe we believed that Braun was gouging

5 the consumer and we wanted to provide -- deliver a

6 price point that was reasonable to the consumer.

7 Q. But you wanted to be the same as Braun?

8 A. I don't know that that's what it's saying.

9 Q. Well, it says same as Braun.

10 MR. SHIMOTA: Objection, form.--

11 BY MS. WENDLANDT:

12 Q. You disagree that Mr. Katz was indicating that the

13 price point for Rayovac's cleaning solution would be

14 same as Braun?

15 A. It's completely vague with regard to what the pricing

16 is. It's saying could be at their price, it could be

17 below them. I mean the way it's written it could be

18 anything. It could have been any pricing.

19 Q. Could it be higher than them?

20 A. It could be, but I wouldn't have supported that and I

21 would have had to sign off on it, because I always

22 thought that the Braun pricing was very high for what

23 you received.

24 Q. Placing before you what has been marked Exhibit 8.

25 A. Are we done with this?

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2 Q. Yes, we are. I hope. Can I ask you -- which is an

3 E-mail dated September 9th, 2002, from Jeff Hovis at

4 Product Genesis to Yuri Avila is it?

5 A. Yes.

6 Q. I ask you to read to yourself paragraph 1.

7 A. Okay.

8 Q. Did Rayovac consider copying Braun's solution and

9 repackaging it at one point?

10 A. By copying, clarify copying.

11 Q. I guess I'm trying to understand the second sentence

12 in this paragraph. It could be that Mr. Avila is the

13 only person that can do that; but since you were

14 involved in the process I thought I'd ask anyway.

15 What is your understanding of that second sentence?

16 A. I can't interpret it. I don't -- I just don't

17 physically understand the English. I mean --

18 Q. Does that mean --

19 A. That's why I read it four times. And I don't

20 understand what it's saying.

21 Q. And you don't know whether Rayovac at one point

22 considered just taking Braun's cleaning solution and

23 repackaging it with a Rayovac label?

24 A. To the best of my knowledge that would never be --

25 never have been done. We actually -- just -- we

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2 actually did not like the way their formulation

3 smells, I mean, just --

4 Q. The fragrance?

5 A. Yeah, the fragrance and a number of other elements.

6 We just personally didn't think it was very consumer

7 friendly. It was too medicinal. And so we went

8 through great efforts to develop our own cleaning

9 solution, and I was a part of the actual development

10 from a fragrance standpoint and what the consumer

11 would smell and kind of see. So I don't know why we

12 would have copied something that we thought wasn't

13 very well done.

14 Q. We had talked earlier about Rayovac's rejection of

15 having its own cleaning fluid cartridge. Do you

16 recall when that occurred?

17 A. I don't. I just know it was early on in the process.

18 But I cannot tell you a date.

19 Q. Do you think it was 2001, 2002, '3?

20 A. I don't know. I just -- I don't know. I know it was

21 fairly on in the pro -- early in the project.

22 Q. I'm asking you to turn your attention back to Exhibit

23 46, the market basis of interest form, dated June

24 20th, 2002.

25 A. Okay.

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2 Q. Under 5, product definition, it says including a

3 disposable cartridge. Does this refresh your

4 recollection that at least as of June 20th, 2002,

5 Rayovac was still considering a disposable cartridge?

6 A. It refreshes my memory that we were considering a

7 cartridge. I don't know exactly when it was taken --

8 when it was taken off.

9 Q. And turning your attention to Exhibit 36 under

10 product definition, you'll see that it has changed

11 from a disposable cartridge to including alcohol

12 based cleaning solution consumable. Does that give

13 you reference as to when the change from cartridge to

14 non-cartridge occurred?

15 A. I can't answer that because -- I can't answer that.

16 Q. Because -- even though Exhibit 36 is dated January

17 29th, 2003, and Exhibit 46 is dated June 20th, 2002,

18 that doesn't give you a range?

19 A. There are a number of mistakes on this first

20 document, document Exhibit 46 which I think -- so I'm

21 not sure if these were copies from another -- I'm not

22 sure what happened here. But very clearly there are

23 some mistakes in the volumes and the standard cost

24 assumptions and so I don't know -- I'm not sure

25 what -- I'm not sure what credence to place on this

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2 document.

3 Q. Exhibit 46?

4 A. Yes. I mean gross miscalculations and standard costs

5 off by multiple -- about four times of what reality

6 would be. So I don't know, I can't answer that

7 question very -- I can't answer that question.

8 Q. Okay. At one point Rayovac considered a cleaning

9 system where the cleaning head would be immersed in

10 cleaning fluid; is that correct?

11 A. I don't know. That's a Yuri, question for Yuri.

12 (Exhibit No. 47 was marked.)

13 Q. Placing before you Exhibit 47 which is a document

14 entitled CCS1 cleaning system.

15 A. Yes.

16 Q. Item number 101, the task issue, is liability review.

17 Do you see that?

18 A. Yes.

19 Q. And then the next column says action, set up meeting

20 with legal to review product and solution. Do you

21 see that?

22 A. Yes.

23 Q. Did Rayovac do that, set up a meeting with legal?

24 A. To the best of my knowledge. That's what it says.

25 Q. And what was the outcome?

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2 A. I believe we were given the green light to proceed.

3 Q. Well, you said you believe that this is what it says,

4 that is, that the meeting actually occurred. As I

5 read this, the meeting was expected to occur on

6 February 28th, 2003, and the status is open. Do you

7 see that?

8 A. Yeah, I believe -- this is --

9 Q. Maybe I'm on the wrong line. No, that's right.

10 A. I believe this is a tracking document. So I don't

11 know how many -- there probably would have been one

12 of these every single week, correct, so we're picking

13 a snapshot in time?

14 Q. I don't know. These were the documents produced to

15 me. I don't know anything else.

16 A. Okay. I don't know either.

17 Q. But at some point a meeting was set up with legal and

18 you were given the green light to proceed?

19 A. Yes --

20 MR. SHIMOTA: Objection, calls for

21 speculation.

22 BY MS. WENDLANDT:

23 Q. And your answer was yes?

24 MR. SHIMOTA: You may answer.

25 A. What was the question again?

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2 MS. WENDLANDT: Can you repeat it.

3 (Question read by the reporter.)

4 A. Yes.

5 (Exhibit No. 48 was marked.)

6 Q. I place before you Exhibit 48, directing your

7 attention to number 34. It says under issue task,

8 tooling release was delayed due to legal concerns.

9 Do you see that?

10 A. I do.

11 Q. What were those legal concerns?

12 A. I don't know.

13 Q. Who would know?

14 A. Yuri.

15 Q. How did Rayovac determine to first launch a rotary

16 and cleaning system and then the foil cleaning

17 system? If you will recall in the 2003 document that

18 you wrote, --

19 A. Yes.

20 Q. -- you didn't distinguish between the foil and

21 rotary, it was a document for both. And then

22 ultimately Rayovac came out with the rotary first --

23 A. Yes.

24 Q. -- the foil second. Why?

25 A. The reason was the shaving system that was coupled

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2 with the cleaner was much further along in

3 development.

4 Q. The rotary?

5 A. Yes.

6 Q. I'm placing before you what has been previously

7 marked as Exhibit 37 which is as I understand it a

8 marketing basis of interest form for the foil --

9 A. Um-hmm.

10 Q. -- cleaner system?

11 A. Yes.

12 Q. And I believe the second page is the actual foil

13 system with the cleaner. The first page is just the

14 shaver. Is that how you read this?

15 A. Yes.

16 Q. Under number 2 of that second page, competitive

17 environment, it states "Braun Syncro launch has

18 captured 25 percent of the plus \$10 price point in

19 the shaver category."

20 A. Um-hmm.

21 Q. What was the significance of that to the market basis

22 of interest?

23 A. It speaks again to the viability of the opportunity.

24 (Recess taken from 11:14 to 11:20 a.m.)

25 (Exhibit No. 49 was marked.)

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2 MS. WENDLANDT: Back on the record.

3 Q. Mr. Doyle, I'm placing before you Exhibit 49 which is

4 a document entitled agenda for MS-5500, 5700 program

5 review dated February 9th, 2004. Have you seen this

6 document before?

7 A. I don't think -- I don't think I've seen this.

8 Q. Can you look under -- can you review it.

9 A. Yes. Are there elements that you'd like me to

10 review?

11 Q. Yeah. I'm going to ask you in particular under

12 capital, it says no capital found for the CCS2, and

13 then I'm going to ask you a question about forecast

14 volumes.

15 A. Okay. Okay.

16 Q. Okay. Under capital, it says, as I said, no capital

17 found for the CCS2. What does that mean?

18 A. No -- probably nobody had appropriated any capital

19 mistakenly for the -- for that project.

20 Q. And whose job would it have been to appropriate

21 capital for the CCS2 project?

22 A. It would have been Peter Katz's job to find -- to get

23 the money from corporate.

24 Q. And Rayovac obviously ultimately came out with a foil

25 cleaning system, so was the capital found for the

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2 CCS2?

3 A. Yes. The CCS2 is the --

4 Q. As I understand it, the CCS1 is the rotary cleaning

5 system, the CCS2 is the foil system --

6 A. Yeah, you're right.

7 Q. -- and the CCS3 system is the women's cleaner?

8 A. Yes.

9 Q. This is referring to the CCS2?

10 A. Yes.

11 Q. My question was was the capital ultimately found for

12 the CCS2?

13 A. Yes, it was.

14 Q. Under forecast volumes, there is a column that says

15 MS-5500 CS and then another one that says MS-5700 CS?

16 A. Are we under the North American NA? Because I can

17 only speak to the NA, North America.

18 Q. Oh, I see.

19 A. The others are UK, Europe, Australian are the other

20 acronyms.

21 Q. I was focusing on the last two columns which is NA.

22 A. What's the question?

23 Q. The question is can you explain these numbers to me,

24 the MS-5500 CS? There is the first entry after NA is

25 10,900.

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2 A. Yeah. These --

3 Q. What does that mean?

4 A. These are volume requirements by week or biweekly.

5 This is what we would require to ship out to our

6 customers, Wal Mart, K Mart, Target, et cetera.

7 Q. And what were these forecasted volumes -- what was

8 the basis of these forecasted volumes?

9 A. A number of them are very predictable because they're

10 pipeline -- what we call pipeline fill requirements.

11 So if Wal Mart has 3,000 stores and there are two

12 pieces per carton, that means they need 6,000 pieces.

13 So you can do that by -- for every account, calculate

14 how much you need to launch the product. And not all

15 retailers have the same reset dates. So that's

16 essentially what that was.

17 Q. This is what you were referring to before as the fall

18 reset?

19 A. Yes, yes.

20 Q. And who was in charge of setting these market or

21 forecasted volumes?

22 A. This would be my group would have provided these

23 numbers, and Peter was responsible for worldwide

24 consolidation of the numbers. So all these numbers

25 would have come from my group.

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2 Q. And that's Peter Katz?

3 A. Yeah. Peter Katz would have consolidated them. He

4 wouldn't actually create the numbers. Because

5 there -- the business -- the business owners in each

6 market of which I was one, and then there was one in

7 Europe and one in Australia, we each provided numbers

8 in. There was a group in each of those markets.

9 Q. And were these forecasted volume numbers what you

10 describe as the pipeline fill requirement type of

11 numbers?

12 A. Yes.

13 Q. You had said some were predictable, some are not?

14 A. Yeah -- excuse me?

15 Q. You had said some were more predictable than others

16 in the pipeline --

17 A. The pipeline fills were. But now just remember, the

18 date that this came out was for all the retailers

19 that made their decisions on which SKUs they were

20 going to take. Okay. So this is the best guess on

21 February 9th on who would take it and how many they

22 would take. A part of -- once you understand who's

23 going to take it, understanding how many they need is

24 easy. But the question on whether they'll take it or

25 not is the more difficult question and less

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2 predictable.

3 Q. How did you determine this best guess?

4 A. Working with the sales force to understand what they

5 believe the viability of gaining distribution was.

6 Q. Okay.

7 (Exhibit No. 50 was marked.)

8 Q. I place before you what has been marked as Exhibit 50

9 which is, again, a market basis of interest form.

10 This one appears to be for the women's shaver; is

11 that correct?

12 A. Correct.

13 Q. Now, we had talked previously how prices had been set

14 by Rayovac for the rotary and for its foil version of

15 the cleaning system. How did Rayovac determine

16 pricing for its women's cleaning system?

17 A. Because Rayovac or Remington essentially owns the --

18 not -- owns is the wrong word, but has a very high

19 share of the women's shaver market. And what we did

20 is we used the same approach, identification of the

21 value for the cleaning system which we deemed to be

22 about \$30 and then we took our high-end shaver which

23 was about \$50 on average and we added \$30, and that's

24 how we created the price for that particular SKU.

25 Q. Is this women's shaver currently being offered for

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2 sale in the United States?

3 A. It just shipped, yes. It's in store -- it's in

4 stores right now. The answer is yes, it's in stores

5 right now.

6 Q. And when did Rayovac first offer this for sale?

7 A. Offer for sale meaning the first day a consumer can

8 purchase it?

9 Q. The first day you offered it to the trade, start with

10 that.

11 A. Fall of last year, late fall of last year, roughly.

12 Roughly in that time period.

13 Q. And when you said it's in stores now, when could

14 consumers actually purchase the --

15 A. About a month ago. For Mother's Day was the about

16 the first time that the product was available for

17 purchase.

18 Q. Asking you to turn your attention back to Exhibit 45,

19 the interrogatory answers.

20 A. Okay.

21 Q. The second full paragraph under response says --

22 A. Are we on 10?

23 Q. Yes, I'm sorry, yes. Interrogatory number 10

24 response, the second full paragraph, the second

25 sentence starts "Mr. Stoltz, in fact, advised Rayovac

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2 employees including James Chasen, Yuri Avila and

3 James Doyle that the design Rayovac chose to pursue --

4 did not infringe any claims of the patents in suit

5 and Rayovac relied upon such advice." Do you see

6 that?

7 A. Yes, I do.

8 Q. What reason did Mr. Stoltz provide to you that

9 Rayovac's chosen design did not infringe the '328

10 patent which was -- let me just see -- Exhibit 10?

11 A. That's a technical question. I was told that it was

12 viable, legally viable to launch. And in terms of

13 the details, that was handled by the legal group in

14 terms of why -- of why it was fine.

15 Q. So beyond it being viable to launch from a legal

16 perspective, you weren't given any specifics?

17 A. No, no. I wouldn't be in a position to -- I'm not

18 trained in engineering matters anyway.

19 Q. Right, and I'm just asking what Mr. Stoltz told you

20 in connection with his advice that it didn't -- that

21 the chosen design did not infringe any of the claims?

22 A. Yes. And Mr. Stoltz did not tell me personally. It

23 came through Mr. Avila, okay, and it came through --

24 internally.

25 Q. So it would have been Mr. Avila speaking to --

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2 A. And internal counsel would have provided that.

3 Q. So who actually spoke to Mr. Stoltz?

4 A. Yuri my understanding is continuously.

5 Q. In that same paragraph, the second-to-last sentence

6 says "Once Rayovac began working on its foil

7 products, Rayovac again consulted Mr. Stoltz to

8 ensure that such products did not infringe either of

9 the patents in suit."

10 A. Yes.

11 Q. What was the nature of the consultation?

12 A. I can't provide the specifics. I would defer to Yuri

13 on that. But the result was the same, that it was

14 legally acceptable to launch.

15 Q. And who told you that?

16 A. A combination of Yuri and our legal folks.

17 Q. And they didn't provide you with the bases for that

18 conclusion?

19 A. No.

20 Q. Continuing on, the next paragraph states "In the fall

21 of 2004, Rayovac asked Mr. Stoltz to memorialize his

22 advice. On October 29, 2004, Mr. Stoltz provided

23 written opinions to Rayovac in which he re" -- I'm

24 sorry, "represented his advice that no Rayovac

25 product infringed any claim of the patents in suit."

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 2 Do you see that?
 3 A. Um-hmm. Yes.
 4 Q. Was there any difference between his October 29th,
 5 2004, written opinion and his oral communications
 6 with Rayovac earlier?
 7 A. No. Can I ask a question, this is 30(6)(b) (sic) for
 8 me, what we're going through now?
 9 Q. I thought it would be, yes. Did you in preparation
 10 for this deposition talk to Mr. Avila-who spoke
 11 directly with Mr. Stoltz?
 12 A. I did not.
 13 Q. So when you said there was no difference between the
 14 written and the oral communication, you meant that
 15 the ultimate conclusion which you learned was the
 16 same?
 17 A. Yes.
 18 (Exhibit No. 51 was marked.)
 19 Q. You have before you Exhibit 51 which is the October
 20 29th, 2004, opinion of Mr. Stoltz. Do you see that?
 21 A. Um-hmm. Yes.
 22 Q. Have you seen this document before?
 23 A. Yes. I believe I've seen this.
 24 Q. When?
 25 A. I've seen this, right?

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 1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY
 2 MR. SHIMOTA: Yes, you have.
 3 BY MS. WENDLANDT:
 4 Q. When did you see this?
 5 A. A few days ago.
 6 Q. And before then you had not seen it?
 7 A. That's correct.
 8 Q. You'll notice that the first paragraph refers to the
 9 '328 patent and notes that Mr. Stoltz is providing
 10 his opinion of the '328 patent, quote, "to the extent
 11 such claims may be relevant to Remington's cleaning
 12 system for rotary shavers." Do you see that?
 13 A. Yes.
 14 Q. And so this opinion is limited to the rotary shavers;
 15 is that correct?
 16 A. Not having read the balance of it, I can't answer it.
 17 It's what the first paragraph says. I will agree
 18 with that.
 19 Q. Okay. And to the extent --
 20 A. I don't know if there is any reference to foils
 21 later. So I can't answer -- I can't fairly answer if
 22 there is anything more in here because I haven't read
 23 it, I haven't read the entire document.
 24 Q. And if upon reading this entire document there is no
 25 mention of foil shavers -- well, I'll represent to

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 2 you that there is no mention of foil shavers later
 3 on. So my question to you is in light of that, did
 4 Mr. Stoltz memorialize his oral communication to
 5 Rayovac about its foil shavers in any document?
 6 A. I'm not aware -- I'm not aware, I can't answer that,
 7 I'm not aware of that.
 8 Q. But you know for certain that Mr. Stoltz advised
 9 Rayovac that its foil shavers didn't infringe the
 10 patents in suit?
 11 A. Yes, yes, yes.
 12 Q. And with regard to the foil shavers, it was again
 13 Mr. Avila that was discussing the legality or the
 14 patent infringement or non-infringement of your
 15 Remington foil shavers with Mr. Stoltz?
 16 A. Yes.
 17 Q. So to understand or to know what the substance of
 18 Mr. Stoltz's communications were to Rayovac, one
 19 would need to speak to Mr. Avila?
 20 A. Yes.
 21 Q. When you reviewed this document in preparation for
 22 this deposition, was there an appendix to this
 23 document that you were shown?
 24 A. I don't believe so.
 25 Q. Turning your attention to page R 10975.

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 2 A. Yes.
 3 Q. The last half paragraph on this page, it says at tab
 4 8. Do you see that?
 5 A. Yes.
 6 Q. And then the following page, there is two paragraphs,
 7 last two paragraphs that say at tab 10 and at tab 11.
 8 Do you see that?
 9 A. Yes.
 10 Q. Do you know what these tabs refer to?
 11 A. No.
 12 Q. And who would have these tabs if they exist?
 13 A. I'm not sure.
 14 Q. Would it be kept in the legal department or Yuri?
 15 A. I assume one of them would have it.
 16 Q. On page 15 of this Exhibit 51, Mr. Stoltz says at the
 17 top "It is my opinion that the shaver cleaning system
 18 being manufactured and sold by Remington does not
 19 infringe any of these claims since the Remington
 20 cleaning" -- I'm sorry, "since the Remington shaver
 21 cleaning system, 1, does not incorporate, quote, a
 22 cradle structure as described in the '328 patent,
 23 and/or, 2, does not incorporate a feed device for
 24 feeding cleaning fluid from the cleaning fluid
 25 container to the cradle structure." Do you see that?

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2 A. Yes.

3 Q. What was Rayovac's understanding as to why its device

4 did not incorporate a, quote, cradle structure as

5 described in the '328 patent?

6 A. That's a question for Yuri. I can't answer that.

7 Q. And with regard to number 2 concerning the feed

8 device, is that your same answer?

9 A. Yes. It's a technical question.

10 (Exhibit No. 52 was marked.)

11 Q. I've placed before you what has been marked as

12 Exhibit 52 which is the October 29th opinion of

13 Mr. Stoltz with regard to the '556 patent.

14 A. Yes.

15 Q. You'll notice that in that first paragraph as with

16 the '328 patent Mr. Stoltz limits his advice to --

17 the -- quote, "to the extent that such claims may be

18 relevant to Remington's cleaning system for rotary

19 shavers." Do you see that?

20 A. Yes.

21 Q. So to the extent Mr. Stoltz gave oral advice to

22 Rayovac about the foil shavers, the person to speak

23 to about that would be Yuri Avila?

24 A. Yes.

25 Q. And again on page 8 of this Exhibit 52, section B,

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2 that first paragraph refers to a tab 1 and a tab 3,

3 and the next page 9, it refers to tab 4, 6, 7. You

4 haven't seen those tabs?

5 A. I haven't.

6 Q. And to the extent these tabs exist, they would be

7 housed either with Yuri or with the legal department

8 of Rayovac?

9 A. I would assume.

10 Q. And have you seen Exhibit 52 before?

11 A. I've seen it.

12 Q. When was the first time?

13 A. A few days ago.

14 Q. In connection with your preparation for this

15 deposition?

16 A. Yes.

17 Q. Asking you to turn your attention to page 11, the

18 bottom paragraph, the last paragraph, not full -

19 paragraph, but half paragraph says "In comparing the

20 shaver and cleaning system developed by Remington to

21 these structures, your system is more analogous to

22 Browning than it is to Braun. In your construction,

23 the bottom surface of your basing is constructed to

24 support the top surface of the shaving head in a

25 manner similar to Browning without peripherally

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2 surrounding and closely enveloping the shaving head

3 in its entirety." Do you see that?

4 A. Yes.

5 Q. What was your understanding or what is Rayovac's

6 understanding of the Browning patent?

7 MR. SHIMOTA: Objection, outside the

8 scope.

9 BY MS. WENDLANDT:

10 Q. You can answer.

11 A. I don't know.

12 Q. And does Rayovac believe that its construction is

13 similar to the Browning patent?

14 MR. SHIMOTA: Same objection.

15 BY MS. WENDLANDT:

16 Q. Do you have an answer?

17 A. I don't know.

18 Q. Have you ever seen the Browning patent?

19 A. No.

20 (Exhibit No. 53 was marked.)

21 Q. I've placed before you Exhibit 53 which is the

22 Browning patent. You'll notice that in -- on the

23 second page, figure 1, there is a number 44 by the

24 bottom of the toothbrush. Do you see that?

25 A. Yes.

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2 Q. And it's indicating a divot at the bottom of that

3 structure. Do you see that?

4 MR. SHIMOTA: Objection, outside the

5 scope.

6 A. I do.

7 BY MS. WENDLANDT:

8 Q. And do you consider that divot to be similar to the

9 Remington cleaning system?

10 MR. SHIMOTA: Same objection.

11 A. I can't answer that. It's a technical question.

12 BY MS. WENDLANDT:

13 Q. Turning your attention back to Exhibit 45, the

14 answers to the interrogatories. It says at the -- I

15 think it's two lines up from the bottom,

16 "Subsequently in November 2004, out of an abundance

17 of caution, Rayovac retained Michael E. Godar to

18 provide a written infringement opinion for the

19 MS-5500 device." Do you see that?

20 A. Yes.

21 Q. Why did Rayovac obtain a second opinion with regard

22 to the foil shaver?

23 A. That's -- I believe that's a legal question, the

24 legal department made a decision.

25 Q. Had you seen the written opinion of Mr. Godar?

<p style="text-align: right;">Page 90</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 A. I have seen it.</p> <p>3 Q. When was the first time you saw it?</p> <p>4 A. A few days ago.</p> <p>5 Q. And when was the first time that you knew that it had</p> <p>6 been obtained?</p> <p>7 A. I'm not sure. I'm not sure. That's a personal</p> <p>8 question to me?</p> <p>9 Q. Yes.</p> <p>10 A. I don't know. I don't know exactly when.</p> <p>11 Q. But you knew that Rayovac had obtained Mr. Godar's</p> <p>12 opinion prior to just a few days ago when you were</p> <p>13 preparing the deposition, for the deposition?</p> <p>14 A. I was aware that we were soliciting outside counsel</p> <p>15 point of view, but -- above me on that. I didn't</p> <p>16 know anything else.</p> <p>17 Q. And no one told you why a second opinion was being</p> <p>18 sought?</p> <p>19 A. No.</p> <p>20 Q. And you didn't ask?</p> <p>21 A. No. I mean my understanding was there were</p> <p>22 absolutely no issues with the -- there were no issues</p> <p>23 from the launch from our perspective.</p> <p>24 Q. Did it puzzle you that a second opinion was being</p> <p>25 asked for?</p>	<p style="text-align: right;">Page 92</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 A. Yes.</p> <p>3 Q. And the first time you saw this document was a few</p> <p>4 days ago in preparation for this deposition?</p> <p>5 A. Yes.</p> <p>6 Q. Turning your attention to page 16 of Mr. Godar's</p> <p>7 opinion, the first full paragraph states, quote, "We</p> <p>8 interpret," do you see that, "we interpret the,</p> <p>9 quote, cradle structure as recited in claim 1."</p> <p>10 A. Am I on the wrong page? Page 16, first full</p> <p>11 paragraph. Okay.</p> <p>12 Q. It says, quote, "We interpret the term cradle</p> <p>13 structure as recited in claim 1 of the '328 patent to</p> <p>14 mean a support constructed to have a bottom and sides</p> <p>15 (thus resembling a baby's bed) for supporting the</p> <p>16 head of the shaver in a position immersed in cleaning</p> <p>17 fluid." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. What was the basis of Mr. Godar's opinion with regard</p> <p>20 to his interpretation of the cradle structure?</p> <p>21 MR. SHIMOTA: Objection, outside the</p> <p>22 scope.</p> <p>23 A. I can't answer that.</p> <p>24 BY MS. WENDLANDT:</p> <p>25 Q. With whom did Mr. Godar interact with Rayovac in</p>
<p style="text-align: right;">Page 91</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 A. No.</p> <p>3 Q. And when you first learned of the fact that Rayovac</p> <p>4 was seeking a second opinion about the foil cleaning</p> <p>5 system, did you learn the substance of the opinion?</p> <p>6 A. Briefly. My understanding, it just corroborated the</p> <p>7 original point of view.</p> <p>8 Q. And who told you that?</p> <p>9 A. I can't remember. It wasn't an official meeting. It</p> <p>10 was just -- I don't know exactly how I learned about</p> <p>11 it, but I learned about it.</p> <p>12 Q. And when you say it corroborated the original point</p> <p>13 of view, are you referring to the analyses itself or</p> <p>14 the ultimate conclusion of non-infringement?</p> <p>15 A. The conclusion of Mel Stoltz.</p> <p>16 Q. The conclusion that your product didn't infringe?</p> <p>17 A. Correct.</p> <p>18 Q. And at that time, were you informed of the bases for</p> <p>19 that conclusion?</p> <p>20 A. No.</p> <p>21 (Exhibit No. 54 was marked.)</p> <p>22 Q. I've placed before you Exhibit 54 which is the</p> <p>23 December 27th, 2004, opinion of Mr. Godar regarding</p> <p>24 the '328 patent and the foil version of the Remington</p> <p>25 cleaner. Do you see that?</p>	<p style="text-align: right;">Page 93</p> <p>1 HIGHLY CONFIDENTIAL - ATTORNEYS EYES' ONLY</p> <p>2 connection with this December 27th opinion?</p> <p>3 A. I believe it's Tom Parker.</p> <p>4 Q. And did you speak with Mr. Parker in connection with</p> <p>5 your preparation for this deposition?</p> <p>6 A. I did not.</p> <p>7 Q. Has Rayovac obtained any other opinions with regard</p> <p>8 to the '328 patent and its rotary -- well, and its</p> <p>9 foil cleaning system?</p> <p>10 A. I'm not aware of any.</p> <p>11 Q. And with regard to its rotary system in the '328</p> <p>12 patent?</p> <p>13 A. I'm not aware of any, but it's possible that they</p> <p>14 exist. I'm not aware of it.</p> <p>15 Q. And with regard to the '556 patent and the rotary</p> <p>16 shaver, are you aware of any other opinions?</p> <p>17 A. No. Same answer. I'm not aware of any.</p> <p>18 Q. And with the '556 and the foil shaver you're not</p> <p>19 aware of any?</p> <p>20 A. Not aware of any.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit No. 55 was marked.)</p> <p>23 Q. I place before you Exhibit 55, which is the December</p> <p>24 13th, 2004, opinion of Mr. Godar with regard to the</p> <p>25 '556 patent and the foil cleaning system. Do you see</p>

24 (Pages 90 to 93)

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2 that?

3 A. Yes.

4 Q. When was the first time you saw this December 13th

5 opinion?

6 A. Two days ago.

7 Q. In preparation for this deposition?

8 A. Yes.

9 Q. And prior to that were you aware of Mr. Godar's

10 advice with regard to the '556 patent and the foil

11 shaver?

12 A. I was aware of it generally speaking. Not '556 or

13 '328, just generally.

14 Q. I see. And your awareness with regard to both of

15 these patents was what?

16 A. Again, that they corroborated the original point of

17 view that we were in a legally safe position.

18 Q. Turning your attention to page 18, under the heading

19 traditional claim construction analysis.

20 A. Yes.

21 Q. The last sentence says "That is, the container and

22 filter combine to form a, quote, unit which is

23 treated as a single component, not as separate

24 components." Do you see that?

25 A. I do.

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2 Q. Do you know what the bases was for Mr. Godar's

3 opinion as to that unit definition?

4 A. I do not.

5 MR. SHIMOTA: Same objection as

6 previously.

7 BY MS. WENDLANDT:

8 Q. After Remington launched its cleaning system, how did

9 you measure -- how did Rayovac measure the success or

10 lack of success of its cleaning system?

11 A. Whether or not it delivered its -- the numbers that

12 were in the plan that are set in the financial

13 objectives by the company.

14 Q. And what numbers are you referring? I'm not

15 specifically looking for 30,000, but is it a unit

16 number, dollar number?

17 A. Dollar number.

18 Q. And with regard to the rotary cleaning system has

19 that been successful?

20 A. Yes.

21 Q. And the foil system?

22 A. Yes.

23 Q. And the women's shaver I'm assuming you don't know

24 yet?

25 A. It's too early.

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2 Q. I'm placing before you Exhibit 19 which is a document

3 entitled Men's 2006 Shaving, Global Shaving NPD Team

4 Recommendation, September 29, 2004. Have you seen

5 this document before?

6 A. I have.

7 Q. And in what connection did you see this? Why did you

8 see this?

9 A. I typically saw all -- I typically saw all new

10 product development initiatives.

11 Q. Is that what NPD stands for?

12 A. Yes, new product development. It's just a general

13 term in the industry.

14 Q. You had referred to NPD as the third-party scanner

15 data, totally different?

16 A. Totally different.

17 Q. Okay. On page 7 of Exhibit 19, it lists internal

18 benchmarks and external benchmarks. And one of the

19 external benchmarks listed is the Braun Syncro. Do

20 you see that?

21 A. Yes.

22 Q. Why was the Braun Syncro an external benchmark?

23 A. Because it's the closest product to the MS-5500.

24 Q. What does it mean to be a benchmark?

25 A. Benchmark, just something you compare to.

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2 Q. On page 10, the portion of this document that's

3 labeled general pop results total U.S.

4 A. Yes.

5 Q. On the second bullet it says Braun Syncro and then it

6 has the numbers 3 and 14. Can you explain to me what

7 this means?

8 A. Just give me a second to try to remember what this

9 is.

10 Q. Sure.

11 A. This test is slightly different, this test is

12 conducted using -- is being used -- is a new test to

13 me which is different than what I'm used to, but I'll

14 give you a general idea of what purchase intent

15 means. Purchase intent is when the respondent or

16 potential consumer, your target market is presenting

17 an idea and they're asked whether they would buy it

18 or not. And there are a number of levels of would

19 you buy: definitely, probably, maybe, definitely not

20 and maybe not. And so I believe the numbers are a

21 little bit -- the numbers are just simply trying to

22 validate or deny whether a concept -- and these are

23 all concepts going down vertically here on the left

24 side, whether they're strong concepts or not.

25 Q. And does a purchase intent top box percentage of 3 --

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2 what does that mean?

3 A. It's -- I'm not -- this test was done slightly

4 differently than I'm used to doing them. So I can't

5 really answer it. I can't really answer it. A 5 I

6 believe is -- I can't answer it.

7 Q. And then --

8 A. This is not the way -- this is not even the norm for

9 the industry in how you do testing. I don't know why

10 we did it this way. --

11 Q. Do you know what top box percentage means?

12 A. Yeah, top box percent typically means people, the

13 respondent, if you were a respondent who said they

14 would definitely buy it. Top 2 box would be

15 definitely or probably. All right. So it's sort of

16 descending down to would not buy. All right. So the

17 higher top box score the better in market success you

18 will most likely have.

19 Q. Okay. On page 27 of Exhibit 19, it's a document

20 entitled headlines on foil versus rotary and the

21 second box is Braun Syncro. It says under foil,

22 significantly higher on PI than all other concepts

23 driven by strong liking scores, strong believability

24 scores?

25 A. Yes.

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2 Q. Can you explain, is PI purchase intent?

3 A. It is.

4 Q. Okay. And what does it mean that the significantly

5 higher PI was driven by the liking scores and

6 believability scores?

7 A. There are a number of metrics. Purchase intent is

8 one. Likability, believability and uniqueness are

9 typically the others. So say that it had strong

10 scores.

11 Q. On those three metrics?

12 A. Right.

13 Q. The PI, the likability and believability?

14 A. Yes.

15 Q. And what were the all other concepts?

16 A. Where do you see that?

17 Q. In the same box, it says significantly higher on PI

18 than all other concepts. This is September 29th,

19 2004.

20 A. Yeah, I know.

21 Q. I don't know if that helps you.

22 A. I'm not sure. I'm assuming it's the previous

23 concepts on the previous page here on page 10. I'm

24 assuming. I'm not completely sure.

25 Q. Page 10.

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2 A. This was handled by the global product innovation

3 group and not my group which is a small group of

4 people who do just new product developments. So my

5 job is to run the business and run the region. So

6 some of the details around how they tested this I'm

7 not going to be able to answer. But I'll do my best

8 just from my good experience on market research.

9 Q. Who's the -- what was that group?

10 A. Global product innovation, GPI.

11 Q. And who would be the person there who would know

12 about this document?

13 A. The person that runs the group is a guy Mark Zander.

14 Q. And so if you had questions about this document you

15 might go to Mr. Zander?

16 A. Yes, or somebody in that group.

17 Q. I'm placing what has been marked as Exhibit 25 before

18 you which is a document called men's shaving

19 marketing plan dated September 2004.

20 A. Yes.

21 Q. Have you seen this marketing plan before?

22 A. Yes. My group generated this, this document.

23 Q. And how can you tell that your group generated that

24 one versus the other one?

25 A. That one?

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2 Q. Exhibit 19.

3 A. Because it's a global -- it's a global initiative.

4 And I run the region.

5 Q. Thank you.

6 A. That's global new product development; and my job is

7 to run everything, so I would be advertising,

8 pricing, everything.

9 Q. Now, turning your attention to page 13760, which is

10 three pages in. Now, there is a bullet, quote,

11 defend against Braun foil share gains with new

12 products. Do you see that?

13 A. Yes, yes, I do.

14 Q. What did your group mean by that? Well, more

15 specifically, what were the Braun foil share gains?

16 A. A lot of them were at the lower price points.

17 Q. So you weren't referring here to the higher price

18 cleaning systems of -- that Braun sells?

19 A. I think we were partially. I believe the period -- I

20 know for a fact the period in which this -- that

21 we're referencing is Braun had strong performance, as

22 we did.

23 Q. And what new products did you intend to use to defend

24 against Braun's foil gains, foil share gains?

25 A. Well, we're in the process -- all this is attorneys

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2 only with respect to business units?

3 MR. SHIMOTA: Right.

4 A. We're in the process of developing a whole line of

5 new foil shavers that we're launching in the next

6 couple months. And none of them actually compete

7 with -- in the Syncro price point ranges. They're

8 all in the middle, middle -- mid, primarily middle

9 price points, so --. That's what these are referring

10 to. If you probably read further, you'll see that it

11 shows where we're launching the products at the price

12 points below that.

13 BY MS. WENDLANDT:

14 Q. Okay. Asking you to turn your attention to page

15 R 13773. Have you got it?

16 A. Yes.

17 Q. It says lessons learned, observation, Remington

18 entree?

19 A. Yes.

20 Q. Into \$100 plus segment with R 9500 has been hugely

21 successful. And then later on it says, under R 9500

22 it has these .3, .1, 18.8 and 6.9?

23 A. Right.

24 Q. Can you explain these numbers going across for me?

25 A. On the bottom line? Sure --

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2 Q. Well, on the R 9500 line.

3 A. Yeah. They're -- simply it's our gross sales and the

4 profit associated with that in the previous fiscal

5 year versus this fiscal year '04. And just shows

6 that we basically didn't have -- we launched the

7 product with -- we launched the product at the very

8 tail end of fiscal '03 which ended in September and

9 so you saw a tiny bit of sales and the next year

10 there was tremendous amount of sales in that segment.

11 Q. So the .3 is what, a percentage?

12 A. No, it's just numbers -- oh, .3 is \$300,000.

13 Q. Oh, I see.

14 A. And 18.8 would be \$18.8 million.

15 Q. Oh, and so based on this significant increase, you

16 conclude that the, you know, product, the R 9500 has

17 been hugely successful; is that correct?

18 A. Yes.

19 Q. Under page 13778, it says observation Braun foil

20 share up 5.3 -- is that price points?

21 A. Percentage points.

22 Q. Percentage points in '04 driven by increased

23 advertising, strong retail execution and Syncro

24 cleaning system. Can you explain to me what that

25 means?

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2 MR. SHIMOTA: Objection to form.

3 THE WITNESS: I answer?

4 MR. SHIMOTA: You may answer.

5 A. Okay. It just -- it says their business -- their

6 business in foils grew during this period of time.

7 BY MS. WENDLANDT:

8 Q. Okay. And the reason Rayovac believes that, you

9 know, there has been increased advertising, strong

10 retail execution and the Syncro cleaning-system?

11 A. Right.

12 Q. Okay. Turning your attention to page 13790. It

13 appears to be a time line.

14 A. Yes.

15 Q. And the first set of I guess products are the best

16 products? It's a column labeled best or row labeled

17 best?

18 A. Yeah, yeah.

19 Q. What is the new shaving technology listed after the

20 MS-5500, 5700? Is that a new cleaning system? What

21 is that?

22 A. It's a new cutting system.

23 Q. New cutting system. And the next page, the first row

24 is the R 9500 with cleaning base?

25 A. Um-hmm.

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2 Q. And then it has in 2006 new evolutionary concept.

3 What does that refer to?

4 A. That's the -- we're working on a cutting system.

5 Q. So it's not a cleaning system?

6 A. There is some work being done on cleaning systems,

7 but that's not what that's referring to.

8 Q. And underneath that row, there is a --

9 A. There is almost at all times work being done on all

10 of these products just like I'm sure at Braun and

11 Gillette and Panasonic and everywhere else.

12 Q. Okay. The next row, it says new in 2005 third

13 quarter new R 9400 with cleaning base?

14 A. Yes.

15 Q. Was that a product -- or has that product been

16 launched?

17 A. No.

18 Q. Are there plans to launch the product?

19 A. No.

20 Q. So that product's been put off?

21 A. It's put off for now, yes.

22 Q. And what was the R 9400 product?

23 A. It was a more competitively priced cleaning system.

24 Q. Okay.

25 A. Shaver.

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2 Q. And how did it differ from the -- how would it have

3 differed from the 9500?

4 A. It just has fewer features.

5 Q. Turning your attention to page 13813.

6 A. Yes.

7 Q. Under risks, the second bullet is Braun cleaning base

8 patent and then it's got an 8.0 dollar parenthetical.

9 Can you explain what that means?

10 A. It's just -- it's the potential risk. I believe we

11 were already engaged by Braun at that point on --

12 whatever would be associated with the lawsuit.

13 Q. And you're referring to this lawsuit?

14 A. Yes.

15 Q. And what does the 8.0 paren mean?

16 A. It's \$8 million.

17 Q. This Exhibit 25, who -- what's the distribution list

18 for this? Is it distributed to anyone?

19 A. Marketing.

20 Q. Just internally within your group?

21 A. Um-hmm. Within my group and then just my boss.

22 Q. And who's your boss?

23 A. Robert Hopton, he's the chief marketing officer.

24 Q. And on that same page under opportunities, there are

25 new product upsides. The first one is the MS-5500

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2 with I think that's \$2 million?

3 A. Yes.

4 Q. And that is the -- is that the cleaning -- I mean,

5 sorry, the foil cleaning system product?

6 A. Yes.

7 Q. And the MS-5100, 5200, what is that?

8 A. Those are new products for launching.

9 Q. Are those cleaning system products?

10 A. No.

11 Q. And the R 9400 we discussed before?

12 A. Yes.

13 Q. On the next page, R 13814, it says open issues, the

14 last issue is Braun cleaning system patent

15 contingencies. What did you mean by that?

16 A. It's just uncertainty around the case.

17 Q. And then page 13902, the last bullet says attack

18 Braun Syncro Activator, dash, introduce rate cutters

19 into MS-5500. What did you mean by that?

20 A. By what?

21 Q. By attack Braun Syncro first.

22 A. It's just a collection of words designed to talk

23 about competing with the competition which is our job

24 for all of us no matter whether you're sitting on

25 Braun's side or our side. So in this -- as you can

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2 see, they have been segmented by price point and so

3 Braun's real product offerings over \$80 are the

4 Syncro and the Activator, and so we were making sure

5 that we were competitively positioned against them.

6 Q. And the way you would ensure that would be to

7 introduce the rate cutters into the MS-5500?

8 A. That was the -- that was part of our plan, yes.

9 Q. What was the other part? --

10 A. That was the plan.

11 (Discussion off the record.)

12 (Exhibit No. 56 was marked.)

13 Q. I place before you Exhibit 56 which is a document

14 entitled -- well, Remington Smart Move men's shavers

15 San Diego pre-read. Do you see that?

16 A. Yes.

17 Q. Have you seen this before?

18 A. Yes, I have.

19 Q. In connection with what did you see this?

20 A. This was in preparation for a major sale -- annual

21 sales meeting in San Diego.

22 Q. And is it a presentation that Rayovac was going to

23 give?

24 A. There was a more detailed version of the big

25 presentation I was going to give in front of, you

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2 know, a hundred people up on a stage. And so they

3 were expected to have pre-read and understand the

4 material even before we arrived in San Diego.

5 Q. And these were the hundred people?

6 A. Yeah, our sales force and then other guests. But the

7 only people who received this document were the sales

8 force.

9 Q. The Rayovac sales force?

10 A. Rayovac sales force, 27 -- 20-some people.

11 Q. On page 31 of your presentation of this Exhibit 56,

12 it's a document entitled objective number 2.

13 A. 41? Oh, 31.

14 Q. Yeah, it's R 12841. But 31 on your presentation.

15 A. Okay.

16 Q. It says strategy, lever national FSI to drive more

17 than fair share of features/displays of R 9500 and

18 MS-5500. What does that mean? What is it to lever

19 the national FSI?

20 A. To leverage.

21 Q. Leverage. And what is national FSI?

22 A. Freestanding insert. It's what you receive in your

23 Sunday paper. Coupon.

24 Q. And what did you mean by drive more than fair share?

25 A. Around this time period when you drop an FSI, you

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 2 typically will get a significant amount of support
 3 from the retailers because you're supporting the
 4 business with considerable amount of money and so
 5 they need -- it's their duty or they need to
 6 participate in the program by making sure that we
 7 have enough of our displays up and have achieved a
 8 feature which is in the Sunday paper, the fliers
 9 where you have a product in it that's typically on
 10 sale.
 11 Q. So Rayovac puts a flier -- pays to put a flier in the
 12 Sunday paper --
 13 A. Yes, right.
 14 Q. -- and as a result Wal Mart needs to coordinate with
 15 Rayovac to stock its shelves more because people will
 16 be buying?
 17 A. Yes, yes.
 18 Q. And who at Rayovac determines whether or not -- maybe
 19 it's not Rayovac, but who determines whether or not
 20 Rayovac will offer a discount on a particular
 21 product? I notice that in your financial -- in the
 22 financial statement some -- there is different SKUs
 23 given based on whether it was the product as is or a
 24 product with a bonus or a product with --
 25 A. The brand team, my team would drive the pricing of

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 2 STATE OF WISCONSIN)
 3 MILWAUKEE COUNTY)
 4 I, LYNN M. BAYER, Registered Merit Reporter
 5 with Eastwood-Stein Deposition Management and Notary
 6 Public in and for the State of Wisconsin, hereby certify
 7 that the matters set forth in the caption to the foregoing
 8 deposition are true and correct; that the witness, JAMES
 9 DOYLE, III, appeared before me at the time and place set
 10 forth; that said witness was first duly sworn, and
 11 thereupon proceeded to testify in said cause; that the
 12 proceedings were taken down in machine shorthand and
 13 thereafter transcribed via computerized transcription
 14 under my direction; and that the foregoing is a true and
 15 correct transcription of the testimony given and the
 16 proceedings had during the taking of said deposition.
 17 I further certify that I am not a relative or
 18 employee of any of the parties hereto, nor a relative or
 19 employee of such attorney or counsel; nor do I have any
 20 interest in the outcome or events of the action.
 21 WITNESS MY HAND AND SEAL OF OFFICE, this the
 22 16th day of June, 2005.
 23 _____
 24 Notary Public in and for the State of Wisconsin
 25 My Commission Expires June 15, 2008

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 2 the products in market. However, retailers don't
 3 always comply with the stated pricing. They
 4 typically do but they don't always.
 5 Q. And what would cause your team to determine to give a
 6 discounted price or to recommend a discounted price
 7 to the retailers?
 8 A. Just from historical data that we have on if you
 9 lower your price by \$10 you typically can generate
 10 X-amount of volume additional.
 11 Q. And would that be triggered by like a holiday event
 12 or --
 13 A. Yes, typically. Typically but not always.
 14 MS. WENDLANDT: Can we take a five-minute
 15 break. I may be done.
 16 (Recess taken from 12:28 to 12:36 p.m.)
 17 MS. WENDLANDT: Back on the record. I
 18 have no further questions.
 19 MR. SHIMOTA: I have no questions either.
 20 (The deposition concluded at 12:36 p.m.)
 21
 22
 23
 24
 25

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